

7/2/25

**CONTRACT  
BETWEEN THE  
COUNTY OF GLOUCESTER  
AND  
ECOLANE USA, INC.**

**THIS CONTRACT** is made effective the 2<sup>nd</sup> day of **July, 2025**, by and between the **COUNTY OF GLOUCESTER**, a body politic and corporate, with administrative offices at 2 South Broad Street, Woodbury, NJ 08096, hereinafter referred to as "County", and **ECOLANE USA, INC.** with an address of 940 West Valley Road, Suite 1400, Wayne, PA 19087, hereinafter referred to as "Contractor".

**RECITALS**

**WHEREAS**, the County requires annual maintenance on the Core Ecolane Software (web-based transit scheduling software), including licenses and maintenance for the core system, driver MDTs, and mapping data for five contiguous counties, plus pre/post trip inspection functionality on MDTs using Ecolane tablet and software; and

**WHEREAS**, N.J.S.A. 40A:11-5DD permits the performance of services for the support and maintenance of proprietary computer hardware and software without public advertising for bids; and

**WHEREAS**, the contract has been awarded consistent with the fair and open provisions of N.J.S.A. 19:44A-20.4 et seq., which exempt this contract from competition because Contractor has certified that it has not previously made and will not make a disqualifying contribution during the term of the contract.

**NOW, THEREFORE**, in consideration of the mutual promises, agreements and other considerations made by and between the parties, the County and the Contractor do hereby agree as follows:

**TERMS OF AGREEMENT**

1. **TERM.** This Contract shall be effective for a term of one (1) year from July 1, 2025 to May 31, 2027.
2. **COMPENSATION.** The Contractor shall be compensated the amount of \$22,147.20 per year for the term of the contract.

Contractor shall be paid in accordance with this Contract document upon receipt of an invoice and a properly executed voucher. After approval by County, the payment voucher shall be placed in line for prompt payment.

Each invoice shall contain an itemized, detailed description of all work performed during the billing period. Failure to provide sufficient specificity shall be cause for rejection of the invoice until the necessary details are provided.

It is also agreed and understood that the acceptance of the final payment by Contractor shall

be considered a release in full of all claims against the County arising out of, or by reason of, the work done and materials furnished under this Contract.

**3. DUTIES OF CONTRACTOR.** The specific duties of the Contractor shall be for services regarding annual maintenance on the Core Ecolane Software (web-based transit scheduling software), including licenses and maintenance for the core system, driver MDTs, and mapping data for five contiguous counties, plus pre/post trip inspection functionality on MDTs using Ecolane tablet and software, as per Quotc 785v3 annexed hereto as Exhibit A.

**4. FURTHER OBLIGATIONS OF THE PARTIES.** During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment, and will ensure that equal employment opportunity is afforded to all applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, sex, veteran status or military service. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

c. The Contractor will send to each labor union with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the vendor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

e. The Contractor agrees to make good faith efforts to meet targeted County employment goals established in accordance with N.J.A.C. 17:27-5.2.

**5. LICENSING AND PERMITTING.** If the Contractor or any of its agents is required to maintain a license, or to maintain in force and effect any permits issued by any governmental or quasi-governmental entity in order to perform the services which are the subject of this Contract, then prior to the effective date of this Contract, and as a condition precedent to its taking effect, Contractor shall provide to County a copy of its current license and permits required to operate in the State of New Jersey, which license and permits shall be in good standing and shall not be subject to any current action to revoke or suspend, and shall remain so throughout the term of this Contract.

Contractor shall notify County immediately in the event of suspension, revocation or any change in status (or in the event of the initiation of any action to accomplish such suspension, revocation and/or change in status) of license or certification held by Contractor or its agents.

**6. TERMINATION.** This Contract may be terminated as follows:

a. Pursuant to the termination provisions set forth in County Bid Specifications or Requests for Proposal, if any, as the case may be, which are specifically referred to and incorporated herein by reference.

b. If Contractor is required to be licensed in order to perform the services which are the subject of this Contract, then this Contract may be terminated by County in the event that the appropriate governmental entity with jurisdiction has instituted an action to have the Contractor's license suspended, or in the event that such entity has revoked or suspended said license. Notice of termination pursuant to this subparagraph shall be effective immediately upon the giving of said notice.

c. If, through any cause, the Contractor shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the County shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contractor under this Contract, shall be forthwith delivered to the County.

d. The County may terminate this Contract for public convenience at any time by a notice in writing from the County to the Contractor. If the Contract is terminated by the County as provided herein, the Contractor will be paid for the services rendered to the time of termination.

e. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by the Contractor, and the County may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the County from the Contractor is determined.

f. Termination shall not affect the validity of the indemnification provisions of this Contract, nor prevent the County from pursuing any other relief or damages to which it may be entitled, either at law or in equity.

**7. PROPERTY OF THE COUNTY.** All materials developed, prepared, completed, or acquired by Contractor during the performance of the services specified by this Contract, including, but not limited to, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports, shall become the property of the County, except as may otherwise be stipulated in a written statement by the County.

**8. NO ASSIGNMENT OR SUBCONTRACT.** This Contract may not be assigned nor subcontracted by the Contractor, except as otherwise agreed in writing by both parties. Any attempted assignment or subcontract without such written consent shall be void with respect to the County and no obligation on the County's part to the assignee shall arise, unless the County shall elect to accept and to consent to such assignment or subcontract.

9. **INDEMNIFICATION.** The Contractor shall be responsible for, shall keep, save and hold the County of Gloucester harmless from, shall indemnify and shall defend the County of Gloucester against any claim, loss, liability, expense (specifically including but not limited to costs, counsel fees and/or experts' fees), or damage resulting from all mental or physical injuries or disabilities, including death, to employees or recipients of the Contractor's services or to any other persons, or from any damage to any property sustained in connection with this contract which results from any acts or omissions, including negligence or malpractice, of any of its officers, directors, employees, agents, servants or independent contractors, or from the Contractor's failure to provide for the safety and protection of its employees, or from Contractor's performance or failure to perform pursuant to the terms and provisions of this Contract. The Contractor's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

10. **INSURANCE.** Contractor shall, if applicable to the services to be provided, maintain general liability, automobile liability, business operations, builder's insurance, and Workers' Compensation insurance in amounts, for the coverages, and with companies deemed satisfactory by County, and which shall be in compliance with any applicable requirements of the State of New Jersey. Contractor shall, simultaneously with the execution of this Contract, deliver certifications of said insurance to County, naming County as an additional insured.

If Contractor is a member of a profession that is subject to suit for professional malpractice, then Contractor shall maintain and continue in full force and effect an insurance policy for professional liability/malpractice with limits of liability acceptable to the County. The Contractor shall, simultaneously with the execution of this Contract, and as a condition precedent to its taking effect, provide to County a copy of a certificate of insurance, verifying that said insurance is and will be in effect during the term of this Contract. The County shall review the certificate for sufficiency and compliance with this paragraph, and approval of said certificate and policy shall be necessary prior to this Contract taking effect. Contractor also hereby agrees to continue said policy in force and effect for the period of the applicable statute of limitations following the termination of this Contract and shall provide the County with copies of certificates of insurance as the certificates may be renewed during that period of time.

11. **SET-OFF.** Should Contractor either refuse or neglect to perform the service that Contractor is required to perform in accordance with the terms of this Contract, and if expense is incurred by County by reason of Contractor's failure to perform, then and in that event, such expense shall be deducted from any payment due to Contractor. Exercise of such set-off shall not operate to prevent County from pursuing any other remedy to which it may be entitled.

12. **PREVENTION OF PERFORMANCE BY COUNTY.** In the event that the County is prevented from performing this Contract by circumstances beyond its control, then any obligations owing by the County to the Contractor shall be suspended without liability for the period during which the County is so prevented.

13. **METHODS OF WORK.** Contractor agrees that in performing its work, it shall employ such methods or means as will not cause any interruption or interference with the operations of County or infringe on the rights of the public.

14. **NONWAIVER.** The failure by the County to enforce any particular provision of this

Contract, or to act upon a breach of this Contract by Contractor, shall not operate as or be construed as a waiver of any subsequent breach, nor a bar to any subsequent enforcement.

**15. PARTIAL INVALIDITY.** In the event that any provision of this Contract shall be or become invalid under any law or applicable regulation, such invalidity shall not affect the validity or enforceability of any other provision of this Contract.

**16. CHANGES.** This Contract may be modified by approved change orders, consistent with applicable laws, rules and regulations. The County, without invalidating this Contract, may order changes consisting of additions, deletions, and/or modifications, and the contract sum shall be adjusted accordingly. This Contract and the contract terms may be changed only by change order. The cost or credit to the County from change in this Contract shall be determined by mutual agreement before executing the change involved.

**17. NOTICES.** Notices required by this Contract shall be effective upon mailing of notice by regular and certified mail to the addresses set forth above, or by personal service, or if such notice cannot be delivered or personally served, then by any procedure for notice pursuant to the Rules of Court of the State of New Jersey.

**18. GOVERNING LAW, JURISDICTION AND VENUE.** This agreement and all questions relating to its validity, interpretation, performance or enforcement shall be governed by and construed in accordance with the laws of the State of New Jersey. The parties each irrevocably agree that any dispute arising under, relating to, or in connection with, directly or indirectly, this agreement or related to any matter which is the subject of or incidental to this agreement (whether or not such claim is based upon breach of contract or tort) shall be subject to the exclusive jurisdiction and venue of the state and/or federal courts located in Gloucester County, New Jersey or the United States District Court, District of New Jersey, Camden, New Jersey. This provision is intended to be a "mandatory" forum selection clause and governed by and interpreted consistent with New Jersey law and each waives any objection based on forum non conveniens.

**19. INDEPENDENT CONTRACTOR STATUS.** The parties acknowledge that Contractor is an independent contractor and is not an agent of the County.

**20. CONFLICT OF INTEREST.** Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services pursuant to this Contract. The Company further covenants that in the performance of this Contract, no person having any such interest shall be employed.

**21. CONFIDENTIALITY.** Contractor agrees not to divulge or release any information, reports, or recommendations developed or obtained in connection with the performance of this Contract, during the term of this Contract, except to authorized County personnel or upon prior approval of the County.

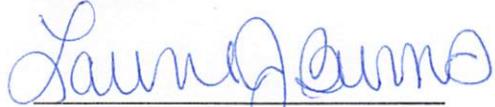
**22. BINDING EFFECT.** This Contract shall be binding on the undersigned and their successors and assigns.

**23. CONTRACT PARTS.** This Contract consists of this Contract document and Attachment A. Should there be a conflict between either document and this Contract, then this Contract shall control.

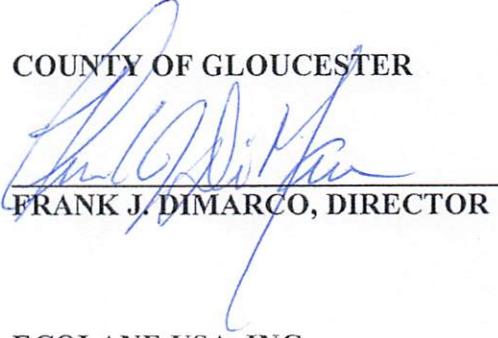
THIS CONTRACT is made effective the 2<sup>nd</sup> day of **July, 2025**.

IN WITNESS WHEREOF, the County has caused this instrument to be signed by its Director and attested by its Clerk, pursuant to a Resolution passed for that purpose, and Contractor has caused this instrument to be signed by its properly authorized representative and its corporate seal affixed the day and year first above written.

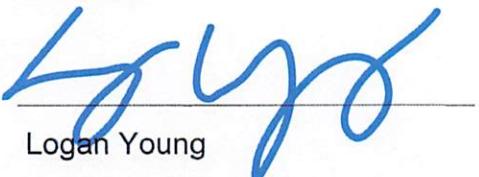
ATTEST:

  
LAURIE J. BURNS,  
CLERK OF THE BOARD

COUNTY OF GLOUCESTER

  
FRANK J. DIMARCO, DIRECTOR

ATTEST:

  
Logan Young

ECOLANE USA, INC.

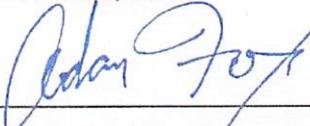
  
By Adam Fox  
Title: Managing Director

EXHIBIT A



## MASTER AGREEMENT

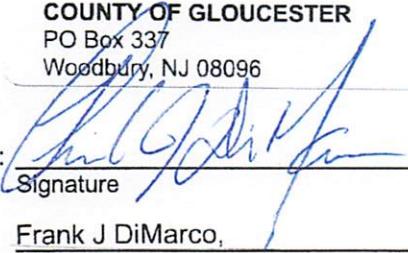
(Signature Page)

ECOLANE USA INC., a Delaware corporation ("Ecolane"), and the customer whose name appears below ("Customer") hereby enter into, as of the Effective Date set forth below, this Master Agreement consisting of the Standard Terms and Conditions and Exhibit A, which are attached hereto and incorporated herein for all purposes.

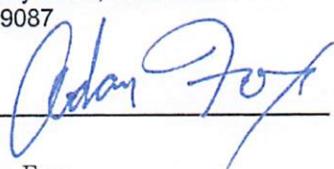
<b>CUSTOMER INFORMATION</b>	
Customer Legal Name	
State of Incorporation / Organization	
Type of Legal Entity	
Notice Contact Information	Attn: _____ _____ Phone: _____ Email: _____

IN WITNESS WHEREOF, the parties have duly executed this Master Agreement by the duly authorized signatures below as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date").

COUNTY OF GLOUCESTER  
PO Box 337  
Woodbury, NJ 08096

By:   
Signature  
Frank J DiMarco,  
Printed Name  
Commission Director  
Title

ECOLANE  
940 West Valley Road, Suite 1400  
Wayne, PA 19087

By:   
Signature  
Adam Fox  
Printed Name  
Managing Director  
Title



## ECOLANE MASTER AGREEMENT STANDARD TERMS AND CONDITIONS

This Master Agreement ("Agreement") sets out the terms and conditions pursuant to which Customer may from time to time access, use or license one or more computer software products from Ecolane and obtain from Ecolane such support, professional and other services.

**NOW, THEREFORE**, in consideration of the mutual agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### ARTICLE I. ORGANIZATION AND RULES OF CONSTRUCTION

**1. Organization.** These standard terms and conditions are divided into five Articles: Article I Organization and Rules of Construction, Article II Definitions, Article III Term License, Article IV Software as a Service (SaaS), and Article V General Terms and Conditions. The terms and conditions in Articles I, II, and V apply during the entire term of this Agreement and to all Licensed Software and Services. Article III applies, in addition to Articles I, II, and V, to all Orders entered into by Customer and Ecolane which identify a Term License. Article IV applies, in addition to Articles I, II, and V, to all Orders entered into by Customer and Ecolane which identify SaaS. The terms and conditions under either Article III or IV will be Inapplicable unless Customer and Ecolane contract for a Term License or SaaS governed by them, respectively. It is acknowledged that licenses, or rights to access and use, for a Term and SaaS may operate concurrently from time to time, as selected by Customer on the Orders.

### ARTICLE II. DEFINITIONS

**2. Definitions.** In addition to the terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth herein:

**2.1. "Access Term"** means the term for which Ecolane has agreed to provide Customer with Hosting Services pursuant to the applicable Order.

**2.2. "Authorized Users"** means the Customer's employees, representatives and contractors who have a legitimate need to use the Licensed Software for Customer's internal business purposes, and with respect to contractors, are bound by obligations of confidentiality with respect to the Licensed Software substantially the same as those of Customer under this Agreement.

**2.3. "Customer Data"** means information, data and other content, in any form or medium, that is inputted into the Hosting Services by Customer or an Authorized User.

**2.4. "Derivative Works"** means a work based upon or

derived from one or more pre-existing works, such as a translation, abridgement, condensation, or any other form in which a work may be recast, transformed, or adapted.

**2.5. "Documentation"** means, when used with respect to the Licensed Software, all documentation, technical manuals, operator and user manuals, flow diagrams, file descriptions and other written information provided by Ecolane that describes the functions, operational characteristics and specifications of such software.

**2.6. "Fees"** means the license, subscription, support, professional, hosting or other fees set out in an Order.

**2.7. "Hosting Services"** means the services offered by Ecolane to establish the Hosted Environment on behalf of Customer, where such Hosted Environment hosts and makes available the Licensed Software to Customer and its Authorized Users of such Licensed Software as a service over the internet.

**2.8. "Intellectual Property Rights"** means all patent rights, copyrights, trademark rights, service mark rights, trade secret rights, and other similar proprietary rights of any type, as they may exist anywhere in the world.

**2.9. "Law"** means any declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule, or other binding restriction of or by any federal, state, municipal, local, territorial, or other governmental department, regulatory authority, judicial, or administrative body (whether domestic, international, or foreign), as amended from time to time.

**2.10. "Licensed Software"** means the computer software products, mobile applications, and other technology which Ecolane licenses to, or grants the right to access and use to, Customer as set out in the applicable Order.

**2.11. "Professional Services"** means any consulting, implementation, configuration or other professional services that are described in an Order. Support Services and any hosting services are not Professional Services.

**2.12. "Services"** means the Professional Services and Support Services.

**2.13. "Support Services"** means those support and maintenance services set forth on Exhibit A.

**2.14. "Updates"** means all new releases, versions, enhancements, updates, corrections, patches, bug-fixes, or other modifications (regardless of how characterized) to the



Licensed Software.

### ARTICLE III. TERM LICENSE

#### 3. Scope of License.

**3.1. Grant.** Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement and each Order, Ecolane grants Customer a personal, non-exclusive, non-transferable, non-sublicensable, limited license for its Authorized Users to use the Licensed Software on behalf of Customer solely during the subscription term set out in the Order and for Customer's internal business purposes in accordance with the Documentation. Under the foregoing license, Customer may either (a) install and/or host the Licensed Software on Ecolane's provided hardware, as agreed by the Parties in an Order and in accordance with Sections 7 and 8 of this Agreement; (b) install and/or host the Licensed Software on Customer's, or its designated contractor's, hardware in accordance with Section 3.2, the Documentation, and in the number of copies of the Licensed Software permitted by the applicable Order (or other licensing metric set forth therein, as applicable); or (c) any combination of the foregoing (a) and (b).

**3.2. Limitations.** Customer shall not, and shall require its Authorized Users not to, directly or indirectly: (a) use (including make any copies of) the Licensed Software or Documentation beyond the scope of the license granted; (b) provide any other person or entity, including any subcontractor, independent contractor, affiliate or service provider of Customer, with access to or use of the Licensed Software or Documentation; (c) modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Licensed Software or Documentation or any part thereof; (d) combine the Licensed Software or any part thereof with, or incorporate the Licensed Software or any part thereof in, any other programs other than as contemplated by the Documentation or the applicable Order; (e) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Licensed Software or any part thereof; (f) remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices provided on or with the Licensed Software or Documentation, including any copy thereof; (g) copy the Licensed Software or Documentation, in whole or in part, other than as permitted by Section 3.1; (h) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Licensed Software, or any features or functionality of the Licensed Software, to any third party for any reason, whether or not over a network or on a hosted basis, including in connection with the Internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud or other technology or service; (i) use the Licensed Software or Documentation in, or in association with, the design, construction, maintenance or operation of any hazardous

environments or systems, including power generation system, aircraft navigation or communication systems, air traffic control systems or any other transport management systems, safety-critical applications, including medical or life-support systems, vehicle operation applications or any police, fire or other safety response systems; and military or aerospace applications, weapons systems or environments; (j) use the Licensed Software or Documentation in violation of any Law, regulation or rule; or (k) use the Licensed Software or Documentation for purposes of competitive analysis of the Licensed Software, the development of a competing software product or service or any other purpose that is to Ecolane's commercial disadvantage.

### ARTICLE IV. SOFTWARE AS A SERVICE (SAAS)

#### 4. SaaS Services.

**4.1. Access.** Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement and each Order, Ecolane will provide Customer's Authorized Users a personal, non-exclusive, and non-transferable right to access and use the Licensed Software on behalf of Customer solely during the subscription term set out in the Order and for Customer's internal business purposes in accordance with the Documentation. Ecolane shall host the Licensed Software on Ecolane's hardware, during the Access Term, as agreed by the Parties in the applicable Order and in accordance with Sections 7 and 8 of this Agreement.

**4.2. Acknowledgment.** Customer acknowledges and agrees that this Agreement and the rights provided pursuant to this Section 4 is a services agreement and Ecolane will not be delivering copies of the Licensed Software to Customer or its Authorized Users as part of the SaaS Services.

**4.3. Proprietary Rights.** Customer acknowledges and agrees that the Licensed Software and any necessary software used in connection with the services provided under this Agreement contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Customer further acknowledges and agrees that the content or information presented to the Customer through the services provided pursuant to this Agreement and Orders may be protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except where expressly provided otherwise by Ecolane, nothing in this Agreement or Documentation shall be construed to confer any license to any of Ecolane's intellectual property rights, including, but not limited to, the Licensed Software, whether by estoppel, implication, or otherwise.

**4.4. Limitations.** Customer shall not, and shall require its Authorized Users not to, directly or indirectly: (a) use (including make any copies of) the Licensed Software or Documentation beyond the scope of the access and use granted; (b) provide any other person or entity, including any subcontractor, independent contractor, affiliate or service



provider of Customer, with access to or use of the Licensed Software or Documentation; (c) modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Licensed Software or Documentation or any part thereof; (d) combine the Licensed Software or any part thereof with, or incorporate the Licensed Software or any part thereof in, any other programs other than as contemplated by the Documentation or the applicable Order; (e) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Licensed Software or any part thereof; (f) remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices provided on or with the Licensed Software or Documentation, including any copy thereof; (g) copy the Licensed Software or Documentation, in whole or in part; (h) rent, lease, lend, sell, license, assign, distribute, publish, transfer or otherwise make available the Licensed Software, or any features or functionality of the Licensed Software, to any third party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud or other technology or service; (i) use the Licensed Software or Documentation in, or in association with, the design, construction, maintenance or operation of any hazardous environments or systems, including power generation system, aircraft navigation or communication systems, air traffic control systems or any other transport management systems, safety-critical applications, including medical or life-support systems, vehicle operation applications or any police, fire or other safety response systems; and military or aerospace applications, weapons systems or environments; (j) use the Licensed Software or Documentation in violation of any Law, regulation or rule; or (k) use the Licensed Software or Documentation for purposes of competitive analysis of the Licensed Software, the development of a competing software product or service or any other purpose that is to Ecolane's commercial disadvantage.

## ARTICLE V. GENERAL TERMS AND CONDITIONS

**5. Orders.** Each time Customer wishes to license, or access and use, Licensed Software from Ecolane or to have Ecolane perform services, the parties will enter into an order specifying (a) the Licensed Software to be licensed by Ecolane to Customer, (b) the Licensed Software to be accessed and used by Customer, (c) the services to be provided, (d) the Fees, and/or (e) the term of such order (each, an "Order"). These Standard Terms and Conditions are hereby incorporated into, and shall apply to, each Order.

**6. Customer Obligations.** Customer is responsible and liable for all uses of the Licensed Software obtained by means of equipment, networks and computing environments provided by Customer, directly or indirectly. Without limiting the generality of the foregoing, Customer is responsible and

liable for all actions and failures to take required actions with respect to the Licensed Software and Documentation by its Authorized Users or by any other third party to whom Customer or an Authorized User may provide access to or use of the Licensed Software and/or Documentation, whether such access or use is permitted by or in violation of this Agreement. Customer is also responsible for purchasing and licensing from applicable third parties the hardware and software required for operation of the Licensed Software and for maintaining current license and support relationships with such third parties as required to enable Customer's use of the Licensed Software.

### 7. Hosting Services.

**7.1. Overview.** If set out in an Order, Ecolane will provide certain Hosting Services as described herein. During the Access Term, Ecolane shall provide the Hosting Services to Customer in accordance with this Agreement and applicable Order. As part of the Hosting Service, Ecolane is hosting the Licensed Software in the Hosted Environment in order for Customer and Authorized Users to be able to access such Licensed Software.

**7.2. Hosted Service Delivery.** Ecolane may provide the Hosted Services from any facility and may from time to time transfer any or all of the Hosted Services being provided hereunder to any new facility(ies) or relocate the personnel, equipment and other resources used in providing those Hosted Services. Ecolane may, in its sole discretion, make any changes to any Hosted Service that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of Ecolane's products or services to its customers, (b) the competitive strength of, or market for, Ecolane's products or services, (c) such Hosted Services' cost efficiency or performance, or (ii) to comply with applicable law.

**7.3. Technical Environments.** Except as set out otherwise herein or in an Order, Ecolane will bear responsibility for the preparation, hosting, operation and maintenance of all facilities, hardware, software, and for installing and maintaining the Licensed Software (the "Hosted Environment") necessary to provide access to and use of the Hosting Services.

### 8. Use of Hosted Services.

**8.1. Customer Responsibilities.** Customer will: (a) be responsible for its and its Authorized User's compliance with this Agreement and for all their acts and omissions as if they were Customer's acts or omissions; (b) be responsible for the accuracy, quality, and legality of Customer Data and the means by which Customer acquired Customer Data; (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Hosted Services and notify Ecolane promptly of any unauthorized access or use of which Customer becomes aware; (d) use Hosted Services only in accordance with this Agreement, any applicable Order, and the Documentation; (e) comply with all Laws applicable to Customer's use of the Hosted Services; and (f) promptly and fully cooperate with Ecolane and make the necessary personnel and resources available to Ecolane for Ecolane to



deliver the Hosted Services, as reasonably requested by Ecolane.

**8.2. Usage Restrictions.** Customer will not: (a) use the Hosted Services outside the licensing metrics set out in the applicable Order (e.g., per user limitations), if any; (b) make any Hosted Service available to, or use any Hosted Service for the benefit of, anyone other than Customer; (c) lease, license, sell, sublicense or otherwise transfer its access to or use of the Hosted Services, or include any Hosted Service in a service bureau or outsourcing offering; (d) use or permit use of any Hosted Service in contravention of Section 8.4 (Prohibited Uses); (e) interfere with or disrupt the integrity or performance of any Hosted Service; (f) attempt to gain unauthorized access to any Hosted Service; (g) permit direct or indirect access to or use of any Hosted Service in a way that circumvents a usage limit; (h) copy a Hosted Service or any part, feature, function, or user interface thereof; (i) copy any Hosted Service except as permitted herein or in an Order or the Documentation; (j) frame or mirror any part of any Hosted Service; (k) access any Hosted Service in order to build a competitive product or service; or (l) reverse engineer any Hosted Service (to the extent this restriction is permitted by law).

**8.3. Technical Requirements.** Customer will need certain equipment, software, and Internet access to be able to access the Hosted Services. Acquiring, installing, maintaining and operating equipment and Internet access is solely Customer's responsibility. Customer is responsible for ensuring that such equipment is compatible with the Hosted Services and complies with all configurations and specifications provided by Ecolane, which may be amended from time to time. Ecolane neither represents nor warrants that the Hosted Services will be accessible through all web browser releases or used with all operating systems.

**8.4. Prohibited Uses.** Customer will not and will not permit others in using the Hosted Services to: (a) defame, abuse, harass, stalk, threaten any individual or infringe or otherwise violate the legal rights (such as rights of privacy, publicity and intellectual property) of others or Ecolane; (b) distribute any harmful, inappropriate, profane, vulgar, infringing, obscene, false, fraudulent, tortious, indecent, unlawful, or otherwise objectionable material or information (including any unsolicited commercial communications); (c) engage in or encourage any conduct that could constitute a criminal offense or give rise to civil liability for Ecolane; (d) misrepresent or in any other way falsely identify Customer's identity or affiliation, including through impersonation or altering any technical information in communications using the Hosted Services; (e) transmit or upload any material through the Hosted Services that contains viruses, trojan horses, worms, time bombs, cancelbots, or any other programs with the intent or effect of damaging, destroying, disrupting or otherwise impairing Ecolane's, or any other person's or entity's, network, computer system, or other equipment; (f) interfere with or disrupt the Hosted Services, networks or servers connected to Ecolane systems or violate the regulations, policies or procedures of such networks or

servers, including unlawful or unauthorized altering any of the information submitted through the Hosted Services; (g) attempt to gain unauthorized access to the Hosted Services, other Ecolane customers' computer systems or networks using the Hosted Services through any means; or (h) interfere with another person's use of the Hosted Services. Ecolane has no obligation to monitor Customer's use of the Hosted Services. However, Ecolane reserves the right (but has no obligation) at all times to monitor, review, retain and disclose any information as necessary to satisfy or cooperate with any applicable Law, regulation, legal process or governmental request.

**8.5. Removal of Content.** If Ecolane is required by any third-party rights holder to remove any content or information, or receives information that any content or information provided to Customer may violate applicable law or third-party rights, Ecolane may remove such content or information and/or notify Customer that it must discontinue all use of such content or information, and to the extent not prohibited by law, Customer will do so and promptly remove such content or information from its systems.

**8.6. Customer Data.** As between Ecolane and Customer, Customer owns the Customer Data. Customer grants to Ecolane and its subcontractors a non-exclusive license to copy, reproduce, store, distribute, publish, export, adapt, edit, translate, and otherwise use, disclose and process Customer Data for any lawful purpose, including, but not limited to, as reasonably necessary or useful to perform and improve the Services and for the exercise of Ecolane's rights under this Agreement and for scenarios, including, but not limited to, data sharing to brokers and clearinghouses on behalf of the Customer. Customer warrants to Ecolane that Customer has the right to grant the foregoing license and provide Customer Data to Ecolane in accordance with this Agreement. Ecolane may anonymize and de-identify Customer Data so that it does not identify Customer or any individual, and cannot be used to identify Customer or any individual, and use such data for lawful purposes, including for analytical and benchmarking purposes, for the development of new products and services, and to improve Ecolane's products and services.

**8.7. Security.** Ecolane will maintain commercially reasonable safeguards designed to protect the security, confidentiality, and integrity of Customer Data. Those safeguards will include measures designed to prevent access, use, modification, or disclosure of Customer Data except: (a) to provide the Hosted Services, prevent or address service or technical problems, or as described herein; (b) as compelled by Law; or (c) as Customer expressly permits in writing. Customer shall protect and maintain the confidentiality of any logins, passwords or other access credential supplied by Ecolane for use with the Hosted Services. Customer is liable for all authorized and unauthorized uses of such account credentials.

## 9. Support Services.

**9.1. General.** All Support Services are included in



purchases of SaaS Services of the Licensed Software for duration of such subscription term set out in the applicable Order. Where Customer has not elected to purchase SaaS Services and instead purchases a Term License, the Support Services must be purchased separately for an additional fee in an Order.

**9.2. Limitations.** Ecolane has no obligation to provide maintenance and support services, including Updates: (a) for any but the most current or immediately preceding version or release of the Licensed Software; (b) for any copy of Licensed Software for which all previously issued Updates have not been installed; (c) for any software or other products Customer has obtained from any third party; (d) for any Licensed Software that has been modified other than by Ecolane, or that is being used with any hardware, software, configuration or operating system not specified in the Documentation; or (e) if Customer is in breach under this Agreement.

## 10. Professional Services.

**10.1. Professional Services.** If specified in an Order, Ecolane will provide Professional Services to Customer in accordance with the applicable Order. Unless otherwise expressly set forth in an Order, Ecolane will own any deliverables, inventions, work product or other output of the Professional Services, including any improvements, enhancements, configurations, or other derivative works to the Licensed Software.

**10.2. Ecolane Personnel.** Each party shall appoint an employee to serve as a primary contact with respect to any Professional Services. In the event that any of Ecolane's personnel providing Professional Services do not perform to Customer's reasonable satisfaction, Customer shall promptly notify Ecolane in writing and Ecolane shall take appropriate actions to correct the issue, including and up to removing such personnel and replacing him or her with a suitable replacement. Ecolane is responsible for all Ecolane Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments, disability benefits, pensions, retirement benefits, insurance, and other benefits.

**10.3. Change Orders.** If either party wishes to change the scope or performance of the Professional Services, it shall submit details of the requested change to the other in writing. Ecolane shall, within a reasonable time after such request, provide a written estimate to Customer of: (a) the likely time required to implement the change; (b) any necessary variations to the fees and other charges for the Professional Services arising from the change; (c) the likely effect of the change on the Professional Services; and (d) any other impact the change might have on the performance of this Agreement. Promptly after receipt of the written estimate, the parties shall negotiate in good faith the terms of such change (if and when mutually agreed in writing, a Change Order). Neither party shall be bound by any

Change Order unless mutually agreed upon in writing.

## 11. Economic Terms.

**11.1. General.** Customer shall pay the Fees set out in the applicable Order in accordance therewith.

**11.2. Fees and Payment.** Customer shall make all payments in U.S. dollars. Unless otherwise expressly agreed to in an Order, payment terms shall net 15 days from the date of invoice, which Customer may pay via ACH. Fees are non-cancelable, non-contingent, and once paid, non-refundable. Fees and expenses due from Customer under this Agreement may not be withheld or offset by Customer against other amounts for any reason.

**11.3. Rate Changes.** The parties agree that for Professional Services provided on a time and materials basis, Ecolane may increase its standard fee rates specified in the applicable Order upon written notice to Customer; provided, that Ecolane provides Customer written notice of such increase at least 30 days prior to the effective date of such increase. Further, all fees will automatically increase on the expiration of the Initial Term and each anniversary thereafter by the greater of (a) three percent (3%) or (b) one percent (1%) plus increases in the Bureau of Labor Statistics Consumer Price Index, Subgroup "All Urban Consumers (CPI-U) All Items Less Food and Energy" as published by the U.S. Department of Labor for All Urban Consumers for the most recently published 12 month period preceding the date on which the increase is calculated.

**11.4. Late Fees.** If any invoiced amount is not received by Ecolane by the due date, then, those amounts will accrue interest at a rate of 1.5% per month or the maximum allowed under state law (whichever is lower). Ecolane, at its option, may suspend the Support Services or any other obligation arising hereunder, in whole or in part, if Ecolane does not receive all amounts due and owing under this Agreement within thirty (30) days after delivery of notice to Customer of the failure to pay such overdue balances.

**11.5. Taxes.** Customer shall be solely liable for any and all taxes arising in connection with its purchases of licenses or services hereunder other than any federal, state, local, or other taxes based on or measured by Ecolane's net income or receipts. Fees under this Agreement are exclusive of federal, state, or local taxes, or other sales, use, value-added, excise, personal property, or other similar taxes.

## 12. Warranties.

**12.1. Limited Warranty.** Ecolane represents and warrants to Customer that, during the term of the applicable Order, the Licensed Software will operate substantially in compliance with its corresponding Documentation. Provided, however, Ecolane shall not be in breach of the foregoing warranty or otherwise responsible for any material defects in workmanship, design and material of the Licensed Software ("Defects") arising as a result of any of the following: (a) if the Licensed Software is used other than in accordance with this Agreement or its Documentation; (b) if



the Defect is caused by a modification, update, add-on, integration, product, or service not provided by Ecolane; (c) any error or inaccuracy in data or information provided by Customer; or (d) any Customer unlicensed activities. Customer's exclusive remedy, and Ecolane's sole obligation, for the breach of the foregoing warranty shall be for Ecolane to provide commercially reasonable efforts to promptly correct, replace or provide a work around the Defect. Customer shall promptly notify Ecolane of any Defects in writing specifying the nature of the Defect and when it arose, but in no event later than thirty (30) days after the occurrence of a Defect.

**12.2. Services Warranty.** Ecolane warrants to Customer that it will provide the Services in a professional and workmanlike manner. Ecolane shall not be in breach of the foregoing warranty unless Customer notifies Ecolane in writing of the non-conforming Services within thirty (30) days of Ecolane's provision of such non-conforming Services. Ecolane shall thereafter use commercially reasonable efforts to re-perform the non-conforming Services so that they are conforming to the foregoing warranty or provide Customer a pro-rated refund for any non-conforming Services. This Section sets out Ecolane's entire obligation and Customer's exclusive remedy in respect of any breach of the warranty set out in this Section.

**12.3. Hardware Warranty.** Ecolane will pass through and assign to Customer the manufacturer's warranty (if any) for any hardware purchased from Ecolane if such manufacturer permits Ecolane to pass through and assign such warranty to Customer. Ecolane agrees to use commercially reasonable efforts to facilitate any hardware related warranty claim by Customer, but Customer acknowledges that it has no right to make a warranty claim directly against Ecolane for any hardware supplied by Ecolane.

**12.4. Customer Warranties.** Customer represents and warrants that (a) Customer will use, and will ensure that all users use, each Hosted Service in full compliance with this Agreement, Ecolane's end-user terms of use and all applicable laws and regulations; (b) Customer owns or has a license to use and has obtained all consents and approvals necessary for the provision and use of all of the Customer Data that is placed on, transmitted via or recorded by any Hosted Service; and (c) the provision and use of Customer Data as contemplated by this Agreement and any Hosted Service do not and shall not violate any of Customer's privacy policy, terms-of-use or other agreement to which Customer is a party or any law or regulation to which Customer is subject to.

**12.5. Mutual Warranties.** Each party represents and warrants to the other party: (a) such party's execution, delivery and performance of this Agreement have been authorized by all necessary corporate or company action and do not violate in any material respect the terms of any law, regulation, or court order to which Ecolane is subject, (b) this Agreement is the valid and binding obligation of such party, in accordance with its terms, and (c) such party is not subject

to any pending or, to such party's knowledge, threatened litigation or governmental action which could interfere with such party's performance of its obligations hereunder.

#### **12.6. Disclaimers.**

**12.6.1** EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN SECTION 12, THE SUPPORT SERVICES AND SOFTWARE ARE PROVIDED TO CUSTOMER "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND, AND EXCEPT AS SET OUT IN SECTION 12, NEITHER CUSTOMER NOR ECOLANE MAKES, AND EACH HEREBY DISCLAIM, ANY OTHER WARRANTIES TO THE OTHER PARTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. ECOLANE PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE, TECHNOLOGY, OR THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SUPPORT SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

**12.6.2** Customer acknowledges and agrees that (i) it is solely responsible for providing and ensuring the proper training of its drivers, owners or operators in the operation of the motor vehicle or motor vehicles (i.e. any automotive machinery utilized for the transport of persons or goods), (ii) Ecolane shall not be liable to Customer or any other entity or individual for any claim or action including costs arising out of the use or misuse of any motor vehicle operated by or on behalf of the Customer or any such entity or individual in connection with this Agreement, including any personal injury or property damage claim or action, and (iii) Customer shall include this paragraph, or the substance thereof, in any agreements between Customer and any third party involving the Hosted Services or other Ecolane property.

#### **13. Confidentiality.**

**13.1. Obligations.** Each party (in such capacity the "Receiving Party") shall hold the Confidential Information (as defined below) of the other party (in such capacity the "Disclosing Party") in strict confidence. The Receiving Party shall have the right to use the Confidential Information for the purpose of fulfilling its commitments and obligations to the Disclosing Party and as permitted by this Agreement. Except as permitted in the foregoing sentence or by prior written consent of the Disclosing Party, the Receiving Party shall not use, disclose or distribute to any person, firm or entity any Confidential Information and shall not permit any person, firm



or entity to use, disclose or distribute any Confidential Information; provided that the Receiving Party may disclose or distribute such Confidential Information to the following: (i) its officers, employees and directors who have a business need to know such Confidential Information; and (ii) its attorneys, accountants, consultants, agents, independent contractors or professional advisors (the "Receiving Party Agents") who have a business need to know such Confidential Information and are subject to fiduciary, professional or written obligations of confidentiality substantially similar to, and no less restrictive than, the obligations set forth herein. The Receiving Party shall be responsible for ensuring that the Receiving Party Agents comply with the terms of this Agreement and shall remain ultimately responsible for the use, disclosure or distribution of Confidential Information by the Receiving Party Agents. Any failure by the Receiving Party Agents to comply with the terms hereof shall constitute a material breach of this Agreement by the Receiving Party. Except in connection with the purposes identified above, the Receiving Party shall not copy or otherwise reproduce, or permit to be copied or otherwise reproduced, all or any part of Confidential Information without the prior written consent of the Disclosing Party.

**13.2. Confidential Information.** "Confidential Information" means (a) the Licensed Software and non-public Documentation, (b) subject and terms of any and all potential or binding business transactions between the parties, and (c) all oral or written information, of whatever kind and in whatever form, and whether or not marked as "confidential," of the Disclosing Party, its employees, suppliers, or customers, including the identities thereof, that may be obtained from any source as a result of or in connection with this Agreement, as well as all such other information designated by the Disclosing Party as confidential including past, present or future business and business activities, financial information, technical information, products, services, research and development, processes, techniques, designs, financial planning practices, client information (including clients' identities and any client-related data or information), and marketing plans.

**13.3. Exceptions.** Confidential Information shall not include any information which the Receiving Party can demonstrate (a) is in the public domain through no fault or breach of confidentiality by such Receiving Party, (b) was known by the Receiving Party prior to its disclosure by the Disclosing Party and was not obtained in such circumstances subject to a requirement of confidentiality, or (c) was developed independently of, and without the use of or access to, any Confidential Information exchanged pursuant to this Agreement. Despite the obligations of Section 13.1, the Receiving Party may disclose the Confidential Information of the Disclosing Party to the limited extent such Confidential Information is required to be disclosed by the Receiving Party by Law or pursuant to an order of any court or administrative body; provided that, with regard to each such disclosure, the Receiving Party shall provide the Disclosing Party with prompt notice of such request or order, including

copies of subpoenas or orders requesting such Confidential Information, shall cooperate reasonably with the Disclosing Party in resisting the disclosure of such Confidential Information via a protective order or other appropriate legal action, and shall not make disclosure pursuant thereto until the Disclosing Party has had a reasonable opportunity to resist such disclosure, unless the Receiving Party is ordered otherwise.

**13.4. Ownership.** All Confidential Information shall be and remain the sole and exclusive property of the Disclosing Party or its employees, suppliers, or customers, as the case may be. Except as otherwise set forth in this Agreement, neither Ecolane nor Customer acquires any Intellectual Property Rights in the Confidential Information, including any rights to create Derivative Works of any Confidential Information, under this Agreement, except the rights to use such Confidential Information as permitted by this Agreement.

**13.5. Unauthorized Disclosure.** The Receiving Party shall (a) promptly notify the Disclosing Party if the Receiving Party discovers or is notified of an unauthorized disclosure or release of, or access to, the Disclosing Party's Confidential Information (each, an "Unauthorized Disclosure") to or by any person obtaining or reasonably believed to have obtained such Confidential Information, or access to such Confidential Information, from or through the Receiving Party, (b) reasonably assist the Disclosing Party in any action taken against the person(s) responsible for such Unauthorized Disclosure, and (c) take immediate corrective action to cease the existing Unauthorized Disclosure and prevent any other or future Unauthorized Disclosures.

**13.6. Return of Confidential Information.** Upon written request by the Disclosing Party at any time, the Receiving Party shall: (a) turn over to the Disclosing Party all Confidential Information, all documents or media containing the Confidential Information, and any and all copies or extracts thereof, or (b) destroy the Confidential Information, and any and all copies or extracts thereof, and provide the Disclosing Party with written certification of such destruction signed by an authorized representative of the Receiving Party.

**13.7. Additional Remedies.** The Receiving Party acknowledges and agrees that due to the unique nature of the Confidential Information, there may be no adequate remedy at Law for a breach by the Receiving Party of its obligations under Section 13 and that such breach may result in irreparable harm to the Disclosing Party. Therefore, upon any such breach or any threat thereof, the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever remedies it may have at Law.

**13.8. Injunctive Relief.** Customer acknowledges that the unauthorized use, transfer, or disclosure of the Licensed Software and Documentation or copies thereof will (1) substantially diminish the value to Ecolane of the trade secrets and other proprietary interests that are the subject of



this Agreement; (2) render Ecolane's remedy at law for such unauthorized use, disclosure, or transfer inadequate; and (3) cause irreparable injury in a short period of time. If Customer breaches any of its obligations with respect to the use or confidentiality of the Licensed Software or Documentation, Ecolane shall be entitled to equitable relief to protect its interests therein, including, but not limited to, preliminary and permanent injunctive relief.

#### 13.9. Collection and Use of Information.

13.9.1 Customer acknowledges that Ecolane may, directly or indirectly through the services of third parties, collect and store anonymized information regarding use of the Licensed Software and about equipment on which the Licensed Software is installed or through which it otherwise is accessed and used, through the provision of maintenance and support services.

13.9.2 Customer agrees that Ecolane may use such information for any purpose related to any use of the Licensed Software by Customer (whether on Customer's equipment or hosted by Ecolane), including but not limited to: (a) improving the performance of the Licensed Software or developing Updates, or the hosting thereof; and (b) verifying Customer's compliance with the terms of this Agreement and enforcing Ecolane's rights, including all Intellectual Property Rights in and to the Licensed Software.

**14. Proprietary Rights.** Except as explicitly provided herein, Customer is not granted any rights or licenses in or to the Licensed Software, the Documentation, and Confidential Information of Ecolane, or any copyright, patent, trade secret or other proprietary or Intellectual Property Rights of Ecolane, and all such rights are and shall remain the exclusive property of Ecolane. Subject to the licenses or rights granted by Ecolane to Customer under this Agreement, Ecolane shall retain all legal and equitable right, title, and interest in and to the Licensed Software and Documentation. The licenses granted herein are personal to Customer. No rights are granted by implication, estoppel or otherwise. Only the rights expressly set out herein are granted. All other rights are reserved.

#### 15. Indemnification.

15.1. Obligation to Defend and Indemnify. Ecolane will defend Customer and its officers, directors, employees, and contractors against any claim, suit, action or proceeding brought by a third party alleging that Customer's receipt or use of the Licensed Software in accordance with this Agreement infringes any United States intellectual property right or misappropriates any trade secret of that third party (each, a "Claim"), and will pay all settlements agreed to by Ecolane and damages awarded against Customer by a court of competent jurisdiction as a result of a Claim; provided, however, Ecolane will have no obligations under this Section 15 with respect to claims to the extent arising out of: (a) any instruction, information, designs, specifications or other materials provided by Customer; (b) use of the Licensed Software in combination with any materials, software, or equipment not supplied to Customer by Ecolane; (c) any

modifications or changes made to the Licensed Software by or on behalf of any person or entity other than Ecolane; (d) the use of any version of the Licensed Software other than the most current release made available by Ecolane; or (e) Customer's breach of this Agreement.

15.2. Additional Remedy. If the Licensed Software, or any part thereof, becomes, or in the opinion of Ecolane may become, the subject of a claim of infringement or misappropriation, Ecolane may, at its option: (a) obtain a license for Customer's continued use of that Licensed Software in accordance with this Agreement; (b) replace or modify the Licensed Software so that it is no longer claimed to infringe or misappropriate; or (c) terminate this Agreement and/or any Order, and upon return of the Licensed Software and all copies thereof, refund to Customer an amount calculated as follows: (i) for term licenses or SaaS Services to the Licensed Software, a pro-rated refund of prepaid amounts covering the unused remaining portion of the subscription term set out in the applicable Order, or (ii) for perpetual licenses to the Licensed Software, a pro-rated refund based on a three year useful life of the Licensed Software.

15.3. Conditions. As a condition to Ecolane's obligations under this Section 15, Customer shall (a) promptly give written notice of the Claim to Ecolane; (b) give Ecolane the right to control the defense of such claim at Ecolane's expense (provided, however, that Ecolane shall not agree to any settlement that requires Customer to pay damages or admit liability without Customer's prior written consent); (c) subject to foregoing (b), be permitted at its own expense to participate in any litigation, negotiations, and/or settlements related to a Claim with the counsel of its own choosing at its own expense; and (d) provide Ecolane all available information and commercially reasonable assistance requested by Ecolane in connection with the defense or settling of such Claim.

15.4. Sole Remedy. THIS SECTION 15 SETS OUT ECOLANE'S SOLE OBLIGATION AND CUSTOMER'S EXCLUSIVE REMEDY IN RESPECT OF ANY INTELLECTUAL PROPERTY CLAIMS AGAINST ECOLANE.

15.5. Customer's Duty. Customer will defend, indemnify and hold harmless Ecolane and its officers, directors, employees, agents, affiliates, successors and permitted assigns against any claim, suit, action or proceeding brought by a third party: (a) alleging that any information or materials provided by Customer (including Customer Data), or Ecolane's receipt or use thereof, violates the rights of any third party, including infringes any intellectual property or privacy rights; (b) arising from Customer's breach of Section 8.7; or (c) arising from Customer's failure to comply with applicable law (each of (a) – (c), a "Claim Against Ecolane") and will pay all settlements entered into and damages awarded against Ecolane as a result of a Claim Against



Ecolane.

#### 16. Limitations of Liability.

16.1. Exclusion of Certain Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS, LOST DATA, OR LOSS OF GOOD WILL) ARISING UNDER OR IN CONNECTION WITH A BREACH OR ALLEGED BREACH OF THIS AGREEMENT, EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE OTHERWISE FORESEEABLE.

16.2. Damages Cap. IN NO EVENT WILL ECOLANE'S AND ITS AFFILIATES' COLLECTIVE AGGREGATE LIABILITY UNDER, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO ECOLANE PURSUANT TO THE APPLICABLE ORDER GIVING RISE TO THE LIABILITY IN THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE GIVING RISE TO THE LIABILITY.

16.3. Integral Part of Arrangement. Section 15 and this Section 16 allocate the risks under this Agreement between Customer and Ecolane and are viewed by the parties as an integral part of the business arrangement between them. The pricing and other terms and conditions of this Agreement reflect this allocation of risk and the limitations specified herein.

17. Inspections and Audits. Customer shall maintain accurate and complete books and records in accordance with generally accepted accounting principles of all transactions occurring hereunder and its use of the Licensed Software. Customer will, upon at least 30 days' prior written notice, grant Ecolane reasonable access, on Customer's premises, to inspect such records and Customer's computer processing environment(s) in which the Licensed Software is installed or otherwise used to verify Customer's compliance with the provisions of this Agreement; provided that: (a) all such inspections shall take place during Customer's regular business hours, and (b) Ecolane shall use commercially reasonable efforts to ensure that any such inspection does not disrupt Customer's business operations. If Ecolane reasonably determines that Customer is using the Licensed Software in a manner inconsistent with the provisions of this Agreement, in addition to all other rights or remedies Ecolane may have, Customer shall pay to Ecolane on demand the costs of the audit, if any, and the Fees applicable to such inconsistent use.

18. Term; Termination. This Agreement commences on the Effective Date and shall continue until terminated in accordance with its terms. This Agreement shall be effective as of the Effective Date and shall apply with respect to any

Order entered into between the parties. The term of each Order shall be set forth in the applicable Order, and the term of each Order will automatically renew for subsequent terms of the same length unless written notification of non-renewal is received by the other party at least thirty (30) days prior to the end of the term. Either Customer or Ecolane may terminate this Agreement or any Order, effective upon written notice to the other party, if such other party, breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides written notice thereof. Upon termination of this Agreement by Ecolane for Customer's breach, each Order shall automatically terminate. Upon the expiration or termination of any Order, the licenses or rights granted thereunder and the Support Services shall also terminate, and Customer shall cease using and destroy all copies of the Licensed Software and Documentation in its possession or control. No expiration or termination shall affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund.

18.1. Customer Data. Upon termination or expiration of this Agreement for any reason, other than Customer's breach, Customer may request that Ecolane export and provide to Customer available Customer Data. Subject to Customer paying Ecolane for all service fees applicable to such work, Ecolane agrees to provide such services at its then current rates. Notwithstanding the foregoing, after thirty (30) days from termination, Ecolane may delete and destroy all Customer Data without notice or liability to Customer.

#### 19. Miscellaneous.

19.1. Delay in Performance. If Ecolane's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, Ecolane shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay, and Customer shall remain liable for Fees set out in an Order.

19.2. Entire Agreement. This Agreement, including each Order and mobile application terms of use, sets out the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous representations, discussions, negotiations, letters, proposals, agreements, and understandings between the parties hereto with respect to the subject matter hereof, whether written or oral. In the event of any conflict between the Standard Terms and Conditions and any Order, the Standard Terms and Conditions shall control.

19.3. Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily,



by operation of law or otherwise, without Ecolane's prior written consent, which consent Ecolane may give or withhold in its sole discretion. Any merger, consolidation or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Agreement for which Ecolane's prior written consent is required. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section is void. Ecolane may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Customer's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

**19.4. Force Majeure.** Neither party will be liable for delay or failure in performing any of its obligations (other than payment obligations) hereunder due to causes beyond its reasonable control, including act or omissions of the other party or its contractors or vendors or any act of nature, war, natural disaster, governmental regulations, terrorism, communication or utility failures or casualties or the failures or acts of third parties.

**19.5. Survival.** This Section and Sections 3.2, 4.4, 8.6, 11, 12.3, 12.4, 13, 14, 15, 16, 17, 18, 19 and 20 of these Standard Terms and Conditions, as well as any other provisions necessary to interpret the respective rights and obligations of the parties hereunder, shall survive the expiration or termination of this Agreement or any Order.

**19.6. Notices.** Any notice, consent, or other communication permitted or required under this Agreement shall be in writing and may be delivered in person, by mail, by nationally recognized courier service or by email to the address or email stated on the signature page of this Agreement. If hand delivered or delivered by courier service, the notice shall be deemed received upon delivery. If by email, the notice shall be deemed received two days after being sent. If sent by mail, the notice shall be deemed received three business days after being deposited with the United States Postal Service by certified mail, return receipt requested, addressed appropriately to the intended recipient. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

**19.7. No Third-Party Beneficiaries.** Except as expressly set forth herein, nothing in this Agreement shall confer any rights upon any person or entity other than the parties hereto and their respective successors and permitted assigns.

**19.8. Amendments.** No amendment, modification, or supplement of any provision of this Agreement will be valid or effective unless made in writing and signed by a duly authorized representative of each party by hand in ink.

**19.9. Governing Law.** This Agreement shall be governed by and construed in accordance with the Laws of

the State of Delaware, without regard to its provisions governing conflicts of Law. Ecolane and Customer hereby consent to the exclusive jurisdiction of state courts of the State of Delaware in connection with any Dispute based on, arising out of, or in connection with this Agreement or any Order, to the extent that any such Dispute is for any reason not resolved pursuant to Section 20.

**19.10. Independent Contractors.** In making and performing under this Agreement, the parties are acting and will act as independent contractors. Neither party is, nor will be deemed to be, an agent, legal representative, joint venturer, or partner of the other party for any purpose. Neither party shall have any authority to act for or to bind the other party in any respect.

**19.11. Interpretation.** Unless the context of this Agreement clearly requires otherwise, (a) references to the plural include the singular, the singular the plural, the part the whole, (b) references to any gender include all genders, (c) "including" has the inclusive meaning frequently identified with the phrase "but not limited to" and (d) references to "hereunder" or "herein" relate to this Agreement. The section headings in this Agreement are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

**19.12. Parties Advised by Counsel.** This Agreement has been negotiated between unrelated parties who are sophisticated and knowledgeable in the matters contained in this Agreement and who have acted in their own self-interest. In addition, each party has been, or has had the opportunity to be, represented by legal counsel. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties, and this Agreement shall not be interpreted or construed against any party to this Agreement because that party, or any attorney or representative for that party, drafted this Agreement or participated in the drafting of this Agreement.

**19.13. Remedies Cumulative.** Except as expressly set out in this Agreement otherwise, no right or remedy herein conferred upon or reserved to either party is intended to be exclusive of any other right or remedy unless otherwise specified herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Agreement, or under applicable Law, unless otherwise specified herein, whether now or hereafter existing.

**19.14. Severability.** Any provision of this Agreement determined to be invalid or unenforceable by a competent tribunal shall be ineffective to the extent of such invalidity or unenforceability, without rendering invalid or unenforceable the remaining provisions of this Agreement.

**19.15. US Government Rights.** The Licensed Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if the Customer is the US Government or any contractor therefor, Customer shall receive only those rights with respect to the Licensed Software and Documentation as are granted to all other end



users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

19.16. Export Regulation. The Licensed Software and Documentation may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Customer shall not, directly or indirectly, export, re-export or release the Licensed Software or Documentation to, or make the Licensed Software or Documentation accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. Customer shall not install the Licensed Software outside of the United States and at all times shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the Licensed Software or Documentation available outside the US. Customer shall indemnify and hold Ecolane harmless for any claims, losses, damages, or expenses, including attorney and other legal fees, incurred by Ecolane that arise from or are related to any breach of this Section.

19.17. Waivers. A waiver by either party of a breach or violation of any provision of this Agreement shall not constitute or be construed as a waiver of any subsequent breach or violation of that provision, or as a waiver of any breach or violation of any other provision of this Agreement.

19.18. Counterparts. This Agreement and any Order hereunder may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Agreement shall become binding when any two or more counterparts thereof, individually or taken together, bear the signatures of both parties hereto.

## 20. Dispute Resolution

20.1. Mediation. Except as set forth below, all disputes, claims, or controversy of any nature arising out of or in any manner relating to this Agreement (including, without limitation, disputes initiated by or relating to either Party's affiliates, or any of their respective officers, directors, partners, members, employees or agents) or any Order, and any disputes concerning the validity, enforceability or applicability of this Agreement or any Order to any particular dispute or claim ("Disputes"), will be submitted exclusively first to good faith negotiations between the Parties' respective senior executives for a period of thirty (30) days. In the event a Dispute has not been resolved, after good faith negotiations, the dispute shall first be submitted to mandatory mediation and, if unsuccessful, to mandatory binding arbitration.

20.2. Arbitration. Any Dispute between the

parties arising out of or in connection with this Agreement or any Order or their interpretation, performance, termination or alleged breach, shall, at the request of either party, be submitted to binding arbitration in Delaware, and finally resolved in accordance with the rules of arbitration of the Revised Code of Delaware as provided in the Delaware Rapid Arbitration Act, Title 10, Chapter 58, except as otherwise provided in this Section. The disputes will be submitted for binding arbitration to a mutually-agreeable arbitrator for arbitration within forty-five (45) days of a written request for arbitration submitted by either party. If the parties are unable to agree upon a mutually acceptable single arbitrator, the arbitration shall then be conducted by a panel consisting of three arbitrators. Each of the parties shall have the right to designate one arbitrator each, and the two arbitrators so designated shall, within a period of ten (10) days from the date of their selection, designate in writing the third arbitrator, who shall act as chairperson of the board of arbitration so formed. If within ten (10) days the two named arbitrators fail to agree upon the third, then at the request of either party, the third arbitrator shall be selected under the rules of the Delaware Rapid Arbitration Act. Any issue concerning whether or the extent to which any dispute is subject to this arbitration provision, including issues relating to the validity or enforceability of these arbitration provisions or the applicability of any defense, shall be decided by the arbitrators. In the event this provision is found to be ambiguous concerning its intended scope, the ambiguity shall be resolved in favor of arbitration. The arbitrator has the authority to issue subpoenas. The arbitrator's decision shall be final, binding, and non-appealable and judgement may be entered thereon. Notwithstanding any provision to the contrary contained under Delaware law, the substantially prevailing party shall be entitled to recover the costs of arbitration, including, without limitation, reasonable attorneys' fees, costs, expenses, audit or accounting expenses incurred in the arbitration process.

20.3. Enforcement. Either Party may seek and obtain from a court any injunctive or equitable relief necessary to maintain (and/or to restore) the status quo or to prevent the possibility of irreversible or irreparable harm pending final resolution of mediation or arbitration. Either Party may bring an action in court to enforce an arbitration award. The Parties expressly waive any right to a trial by jury on all Disputes related to this Agreement or any Order.

20.4. Confidential Information and Dispute Resolution. The resolution of disputes between the Parties likely would involve Confidential Information. It is therefore necessary to resolve such disputes in a non-public forum and/or with the greatest possible confidentiality if in a public forum. Accordingly, the Parties agree that all information regarding any mediation or arbitration proceedings, including any settlement or arbitration award, will constitute Confidential Information.





## EXHIBIT A

### SUPPORT SERVICES/SERVICE LEVEL AGREEMENT

This Exhibit A (the "Service Level Agreement") is made part of and incorporated in the attached Master Agreement.

#### Overview

Ecolane's Support Services are set forth in this Service Level Agreement. During the term of this Agreement, Ecolane will provide the following support services if the Services do not operate substantially in accordance with the Documentation. Support will be handled via phone, email, and the internet when Ecolane support personnel are not at the customer site. The infrastructure for this plan is a request tracking system used to facilitate the process of tracking and resolving customer needs and issues. Every service request is logged into the system and is accessible by Ecolane support representatives.

#### Assignment of Service Request Severity

When a customer has opened a service request and reaches customer support, the Ecolane associate will assess the severity of the request based on the customer's description of the issue. The severity of the service request will be recorded at support.ecolane.com.

Table 1 below describes the definitions used in identifying and assigning a severity to the customer's reported issue.

Severity	Criteria
Critical	<ul style="list-style-type: none"><li>Customer's production system is down</li><li>Ecolane product is unusable resulting in total disruption of work or other critical business impact.</li><li>No workaround is available</li></ul>
High	<ul style="list-style-type: none"><li>Major feature/function failure</li><li>Operations are severely restricted</li><li>A workaround is available</li></ul>
Medium	<ul style="list-style-type: none"><li>Minor feature/function failure</li><li>Product does not operate as designed, minor impact on usage, acceptable workaround deployed</li></ul>
Low	<ul style="list-style-type: none"><li>Minor issue</li><li>Documentation, general information, enhancement request, etc.</li></ul>

#### Response and Resolution Targets

Ecolane Customer Support response and resolution targets are described below:

**Response:** When Ecolane Customer Support receives a support request, a support engineer will provide feedback to the customer that the request has been logged and assigned to the appropriate resource. The exact response (described below) will vary depending on the support method used by the customer, and the response time will commence as soon as the support request is received and Ecolane has a clear understanding, the ability to reproduce or identify from the system log the issue at hand (support request)

**Web:** Ecolane will assign a status and severity, and update the service request to let the customer know the request has been received. A Service Request ID # will be assigned immediately when the support request is submitted from the Web.

**E-Mail:** An automated e-mail reply will be sent immediately after receiving the e-mail request. Ecolane will reply to the e-mail with a Service Request ID # and a time frame when to expect a response or contain a request for additional information.

**Phone:** Ecolane will answer the call or respond to a call that has gone to voice mail, document product specific information in the service request, provide the customer with a Service Request ID # and begin support activities. Including a roll back to an earlier version if possible and it is likely to solve the issue. Ecolane staff will be available for contact on a twenty-four hour per day, seven day per week basis.

**Resolution:** An answer, fix or a satisfactory workaround to the support request

**Solution:** The long-term resolution to the support request, issue or question.

Severity	Target Response	Target Resolution	Solution (1 or more of the following)



Critical	<b>1 Business Hours</b>	Within 4 hours from actual response	<ul style="list-style-type: none"><li>• Satisfactory workaround is provided</li><li>• Product patch is provided</li><li>• Fix incorporated into future release</li><li>• Fix or workaround incorporated into Solution Library</li></ul>
High	<b>8 Business Hours</b>	Within 36 hours from actual response	<ul style="list-style-type: none"><li>• Satisfactory workaround is provided</li><li>• Product patch is provided</li><li>• Fix incorporated into future release</li><li>• Fix or workaround incorporated into Solution Library</li></ul>
Medium	<b>24 Business Hours</b>	Within 15 Business Days	<ul style="list-style-type: none"><li>• Answer to question is provided</li><li>• Satisfactory workaround is provided</li><li>• Fix or workaround incorporated into Solution Library</li><li>• Fix incorporated into future release</li></ul>
Low	<b>72 Business Hours</b>	Within 30 Business Days	<ul style="list-style-type: none"><li>• Answer to question is provided through FAQ, Knowledge Base, or through trained customer subject matter experts (SME)</li><li>• Fix or workaround incorporated into Solution Library</li></ul>

#### Assignment of Service Request Status

When a customer contacts Ecolane Customer Support and requests help to resolve a question or an issue, a service request is opened. The following table describes the possible status that may be assigned to a service request.

Status	Criteria
Open	A service request has just been submitted. It may be assigned to an individual or a queue. Ecolane has not responded yet to customer.
Responded	Ecolane has responded to the customer regarding the receipt of the service request and is actively pursuing a resolution.
On Hold	Ecolane is not actively working on the resolution of the service request. Generally, this is due to information pending from the submitter of the service request. However, service requests may be put on hold for other reasons as well.
More Info Required	Ecolane is waiting for more information to be able to clearly understand, have the ability to reproduce or identify from the system log the issue at hand.



Closed	<p><b>Closed status reflect that:</b></p> <ul style="list-style-type: none"><li>• The customer and the Ecolane agree that a satisfactory resolution has been provided, or</li><li>• The customer understands that there is not a solution to the issue at hand, and the issue is not a result of a product defect, or</li><li>• Ecolane has made multiple attempts to contact the customer that opened the log and the customer has not responded.</li></ul> <p>Electronic service requests (Web, e-mail) may be closed when Ecolane Professional Services has provided an electronic reply with a high degree of confidence that the reply will resolve the issue or answer the question.</p>
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Networking, hardware and installed software at the site are the sole responsibility of the customer and are not covered in Support Services. Customer misuse or unauthorized use of Licensed Software is not covered in Support Services.