

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.

CUSTOMER INFORMATION	
Customer Legal Name	Kingsport Area Transit Service
State of Incorporation / Organization	TN
Type of Legal Entity	
Notice Contact Information	Attn: Timothy Land Kingsport Area Transit Service 900 East Main St. Kingsport, TN 37600 timothyland@kingsporttn.gov 423-224-2612

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

Customer:

Kingsport Area Transit Service

By: Patrick W. Shull
Signature
Patrick W. Shull
Printed Name
Mayor
Title

ECOLANE

940 West Valley Road, Suite 1400
Wayne, PA 19087

By: Miro Gjorgjevski
Signature
Spiro Gjorgjevski
Printed Name
President
Title

ATTEST:

Amanda Marshall
DEPUTY CITY RECORDER

APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

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

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

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>Closed status reflect that:</p> <ul style="list-style-type: none">• The customer and the Ecolane agree that a satisfactory resolution has been provided, or• 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• Ecolane has made multiple attempts to contact the customer that opened the log and the customer has not responded. <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.

ADDENDUM TO ECOLANE USA INC MASTER AGREEMENT

This Addendum (herein "Addendum") amends the Ecolane USA Inc., Master Agreement and any and all other terms and conditions as well as attachments, exhibits, any physical or virtual documents or writings, referenced therein, and any click through, clickwrap, shrink-wrap, or other such virtual agreement, *etc.* (all of which are herein "Agreement") between Ecolane USA Inc., a Delaware Corporation its affiliates and subsidiaries (herein "Vendor") and City of Kingsport, Tennessee (herein "City"). In consideration of using Vendor's form agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged the Agreement is amended as follows:

- 1. Precedence.** Notwithstanding any other provision in the Agreement, the language in this Addendum takes precedence over all other terms, conditions or language to the contrary or in conflict with the language herein, and the Agreement and this Addendum shall not be construed to create any ambiguity, it being the intent of the parties that this Addendum shall control. In the event of a conflict between this Addendum and the provisions of the Agreement, the provisions of this Addendum shall, to the extent of such conflict take precedence unless such document expressly states that it is amending this Addendum.
- 2. Indemnity, Limitation of Liability and Disclaimer of Warranty.** Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by City to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring City to indemnify or hold harmless Vendor or any other person or entity and any limitation of liability in favor of Vendor is enforceable only to the extent permitted by Tennessee law, provided City's monetary limits of liability under any such provision is limited to the monetary limits of liability as provided for in the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 *et seq.* No provision of this Agreement shall act or be deemed a waiver by City of any immunity, including its rights or privileges or of any provision of the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 *et seq.*
- 3. No Liability for Users or Third Parties.** Except as provided in the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 *et seq.* City is not responsible for Users of the Service, their acts or data, or any acts or data of a third party.
- 4. No Liability of Officials and Employees.** No official, employee or volunteer, whether disclosed or undisclosed, of City shall be personally liable to Vendor or any other person or entity, including a third party beneficiary, in the event any provision of the Agreement is unenforceable; there is any default or breach by City; for any amount which may become due under the Agreement ;or on any obligations under the terms of the Agreement and Vendor and any other person or entity, including a third party beneficiary, shall to look solely to City for the satisfaction of any liability of City hereunder.
- 5. Warranty.** Vendor warrants that the products purchased herein when used in accordance with the documentation shall operate in all material respects in conformity with the written representations of Vendor. If it does not perform as warranted, Vendor shall use commercially reasonable efforts to correct the products so that it operates in all material respects in conformity with the written representations of Vendor. If it cannot correct the products within a reasonable period of time, Vendor shall refund the purchase price of the products. Additionally, services shall be performed in a professional and workmanlike manner in conformance with the representations of Vendor which induced City to secure Vendor's services. Because Tennessee law may not allow City to agree to the disclaimer of warranties, any such disclaimer of warranties shall be enforceable only to the extent permitted by Tennessee law, and City reserves all rights afforded to local governments under law for all general and implied warranties.
- 6. Purchases.** City, as a governmental entity, can make purchases only pursuant to its procurement requirements, which may require an invitation to bid by vendors and award of the purchase based on competitive bids competitive bids.
- 7. Confidentiality.** The Agreement is a public record, and it, along with all documents or materials, in any format, including, but not limited to, paper, electronic, or virtual, that are public records pursuant to the Tennessee

Public Records Act, set out in Tenn. Code Ann. §10-7-503 *et seq.*, are not confidential and are subject to disclosure in whole or in part, without regard to any provision contained in the Agreement declaring information confidential. Additionally, City must, upon proper request, release public documents and records as defined by Tenn. Code Ann. §10-7-503 *et seq.*, including, but not limited to, the Agreement and all records created and maintained related to the Agreement, without any requirement to disclose such request to Vendor or provide Vendor with notice or the time to obtain a protective order. City does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This Section 7 serves to meet such burden and authorization of disclosure.

8. **Accessibility.** Vendor warrants that the software conforms to the accessibility guidelines, including, but not limited to, supporting assistive software or devices such as large-print interfaces, text-to-speech output, refreshable braille displays, voice-activated input, and alternate keyboard or pointer interfaces, etc., established by the World Wide Web Consortium's Web Content Accessibility Guidelines 2.2 (WCAG 2.2), and the accessibility guidelines established by Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and implementing regulations set forth in 36 C.F.R. Part 1194. Vendor further agrees to indemnify and hold harmless City from any claims arising out of Vendor's failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a material breach of the Agreement. Notwithstanding the foregoing, City acknowledges and understands the legal and practical distinction between 'software' and 'content,' and further agrees that City, not Vendor, shall have sole responsibility for WCAG 2.2 and Section 508 compliance as it relates to content.
9. **Term.** City or Vendor may terminate the Agreement and use of the service at any time for any reason. However, termination shall not take effect until ninety (90) days after written notice is delivered by the party terminating the agreement to the other party. City's access to any data in possession of Vendor shall not be restricted or denied until the effective date of the termination. Upon termination, the City shall make payment for any services provided prior to the date of termination. Notices to the City shall be sent to:

Kingsport Area Transit Service 900 East Main Street Kingsport, TN 37660	Office of the City Attorney City of Kingsport 415 Broad Street, Ste. 333 Kingsport, TN 37660
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10. **Name and Logo.** Vendor shall not use City's name, its marks, or any of City logos, including Kingsport City Schools, in marketing or publicity materials or for marketing or publicity purposes without prior written authorization from City.
11. **Governing Law.** The Agreement and the rights and obligations of the parties are governed by the laws of the state of Tennessee, without regard to its conflict of laws principles.
12. **City's Refusal to Arbitrate, Selection of Jurisdiction, Waiver of Jury Trial, Venue, Service of Process.** Pursuant to the Constitution and Laws of the State of Tennessee, City is a sovereign entity subject only to those courts with jurisdiction over City. Therefore, any reference to the resolution of disputes through arbitration is expressly stricken from the Agreement and City expressly refuses to arbitrate any dispute. If a dispute arises between the parties concerning any aspect of the Agreement, and it cannot be resolved by mutual agreement, any party may resort to resolution of the dispute by litigation in the state courts in Kingsport, Tennessee or the Federal court for the Eastern District of Tennessee, Northeastern Division. However, neither party shall be obligated to provide any type of pre-suit notice before initiating a cause of action. The parties waive their right to a jury trial. The parties hereby consent to the mandatory and exclusive venue and jurisdiction of the state court located in Kingsport, Tennessee or the Federal court for the Eastern District of Tennessee. The parties stipulate and agree that submission of this agreement shall constitute conclusive proof of their consent to the jurisdiction and venue of the courts named herein. Service of process shall comply with the Tennessee Rules of Civil Procedure or applicable federal rules, and City does not agree to any other service of process procedure.
13. **Responsibility for Litigation Costs, Expenses and Payment of Attorney's Fees.** Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by City to indemnify a third party or agree to a limitation of liability provision. This prohibition

extends to contractual provisions for the payment of attorney's fees. In the event of litigation between City and Vendor each party shall be solely and exclusively responsible for the payment of litigation costs, expenses and attorney's fees excepting those costs which may be awarded by a court of competent jurisdiction as specified by Tennessee law or applicable rules of civil procedure. Discretionary cost may be awarded by a court as permitted by Tennessee law, provided City does not waive its governmental immunity.

14. **Non-appropriation.** Vendor acknowledges that City is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event Client fails to appropriate funds or make monies available for any fiscal year covered by the term of this Agreement for the services to be provided, this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to City, such termination shall not be a breach of this Agreement, and any unused payment made to Vendor shall be returned to City. Furthermore, this provision shall extend to any and all obligations imposed upon City to reimburse Vendor for any reimbursements, refunds, chargebacks, penalties, fees, or other financial obligations which exceed the funds tendered to Vendor, FPPs, or Payment Processing Partners in relation to any event.
15. **Audit and Liability Associated Therewith.** City as a governmental entity is only permitted to expend those public funds under its authority which have been properly appropriated. Additionally, pursuant to the Constitution of the State of Tennessee is prohibited from assuming risks that otherwise fall on another party or from assuming unknown liabilities. Therefore any requirement that City bear the cost of any audit or any fees associated therewith is hereby stricken from the agreement and of no force or effect. Any use of Vendor's system inconsistent with the provisions of the agreement shall only constitute grounds for termination of the agreement and then only upon City's failure to cure a breach of the agreement. Additionally, Vendor shall indemnify and hold city harmless from any loss or damage that may result from Vendor's audit of City's use of the Licensed Software.
16. **No Taxes.** As a tax-exempt entity, City shall not be responsible for sales or use taxes incurred for products or services. City shall supply Vendor with its Sales and Use Tax Exemption Certificate upon Vendor's request. Vendor shall bear the burden of providing its suppliers with a copy of City's tax exemption certificate and Vendor shall assume liability for such applicable Sales and Use Taxes, if any, that should be incurred.
17. **Amendment.** Unilateral modification or amendment of the Agreement by Vendor is prohibited and any provision permitting such by Vendor is not applicable to City. Any amendment or modification of the Agreement or this Addendum is binding only if it is in writing and properly executed by the signatures of authorized representatives of the parties hereto, including attestation by City's city recorder and approved as to form by City's city attorney.
18. **Assignment.** Any assignment or transfer of a right or interest under this agreement shall only be made pursuant to a written agreement between City and Vendor.
19. **Survival.** This Addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference.
20. **No Presumption Against Drafter.** This Addendum shall not be construed for or against any party because that party or that party's legal representative drafted any of its provisions. Accordingly, this Addendum shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Addendum differs in any respect from any previous draft hereof.
21. **Counterparts.** This Addendum may be executed in one or more counterparts by City and Vendor. If so executed, the signer shall deliver an original to the other party and the collective counterparts shall be treated as the fully executed document.
22. **Effective Date.** This Addendum shall be effective immediately after the Agreement is effective.

The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

Ecolane USA, Inc.

Miro Gjorgjevski
Signature

8/1/23

Date

Spiro Gjorgjevski

Printed Name

President

Title

City of Kingsport, Tennessee

Patrick W. Shull
Patrick W. Shull, Mayor

8/28/2023

Date

Attest:

Angela Marshall
Angela Marshall, Deputy City Recorder



Approved as to form:

Rodney B. Rowlett III
Rodney B. Rowlett, III, City Attorney