

## ECOLAB PROGRAM TERMS AND CONDITIONS

These Ecolab Program Terms and Conditions (“Terms”) collectively with the addenda hereto and other terms and conditions incorporated herein by reference (the “Agreement”) govern the use of Ecolab cloud-based online programs (“Programs”) and related Program Equipment and are between Ecolab Inc. or an Affiliate (“Ecolab”) and the customer entity or individual accepting these Program Terms (“Customer”). Capitalized terms not otherwise defined have the meanings set forth in the Definitions Addendum.

BY CLICKING “I AGREE” AT THE BOTTOM OF THESE PROGRAM TERMS, BY ENTERING INTO AN ORDER FORM THAT REFERENCES THESE PROGRAM TERMS, BY CLICKING AN APPROPRIATE BUTTON TO CREATE A PROGRAM ACCOUNT, OR BY ACCESSING OR USING THE PROGRAM, CUSTOMER AGREES THAT (A) IT HAS READ AND UNDERSTANDS AND AGREEES TO THESE PROGRAM TERMS AND ALL OTHER TERMS COMPRISING THE AGREEMENT (INCLUDING ALL TERMS INCORPORATED BY REFERENCE TO A URL) AND (B) IF YOU ARE ENTERING IN TO THE AGREEMENT ON BEHALF OF AN ENITTY, YOU HAVE THE LEGAL AUTHORITY TO BIND THE ENITTY.

### 1. The Program and Related Services.

- a. Provision of the Program. Ecolab will make the Program available to Customer pursuant to the Order Form and in accordance with applicable Documentation. Ecolab will provide the Program in accordance with all laws applicable to Ecolab’s provision of the Program to its customers generally.
- b. Permitted Use. Subject to Customer’s compliance with the Agreement, Ecolab grants Customer a non-exclusive, non-transferable and non-sublicensable right to allow End Users to access and use the Program solely for Customer’s internal business purposes.
- c. Professional Services. Ecolab may provide installation, implementation, data integration, training, support, consulting, advisory and other professional services in connection with the Program and Program Equipment pursuant to one or more statements of work or other Order Forms entered into by Ecolab and Customer from time to time that describe the scope and fees for such services. If Customer subscribes to the provision of Customer Data from Ecolab (where Ecolab makes such service available), the professional services may also include configuring an FTP connection to enable such data transfers or establishing another means for delivering or retrieving such data.

### 2. Customer Responsibilities.

- a. End Users. Customer may allow End Users to access and use the Program in accordance with the parameters in the Order Form (or if none are specified, one (1) End User). Customer is solely responsible End Users’ compliance with the Agreement and Documentation. Any breach by an End User will be deemed to be a breach by Customer.
- b. Program Credentials. Customer is solely responsible for managing, monitoring and administering End User login account credentials including issuing usernames and passwords and suspending access. Customer will ensure that End Users maintain the security and confidentiality of their login account credentials and passwords and will immediately notify Ecolab upon learning of actual or suspected unauthorized access to or use of login account credentials or the Program.
- c. Restrictions. Customer shall not and shall not permit any End User to: (i) de-compile, reverse engineer or disassemble the Program or Program Equipment or apply any other process or procedure to derive the source code or any other proprietary information thereof; (ii) sell, transfer, lease, resell, license or otherwise make the Program or Program Equipment available to or for the benefit of third parties; (iii) provide access to or use the Program or Program Equipment (A) in violation of applicable law or regulation (including U.S. economic trade sanctions and export control laws and regulations) or (B) other than as permitted by these Program Terms and the Documentation; (iv) provide Customer Data to Ecolab or the Program for the purposes contemplated by these Program

Terms without first providing all legally-required notices and obtaining all necessary rights, licenses and consents; (v) use the Program or Program Equipment in any way that (A) interferes with or disrupts the security, integrity, stability or availability of any network or computer system, (B) results in the introduction of viruses or other malicious code to the Program or any Ecolab network or computer system, (C) attempts to gain unauthorized entry to any servers or databases through which the Program is provided or (D) transmits, stores, displays, distributes or otherwise makes available Customer Data or other information or content that is illegal, harmful, fraudulent, infringing or offensive; or (vi) use the Program or Program outputs for human resource decisions.

- d. Suspension. Ecolab shall have the right to immediately suspend access to the Program if in Ecolab's good faith judgment Customer or End User access or use threatens the security, integrity, stability or availability of the Program or otherwise presents a risk of loss or damage to the Program, any Ecolab network or computer system or the data or property of any other Ecolab customer or vendor. Ecolab will use commercially reasonable efforts to provide Customer with notice and an opportunity to remedy the issue prior to suspending access if in Ecolab's judgment the circumstances allow. Ecolab may also suspend access for non-payment of amounts due after providing Customer prior notice and an opportunity to cure.
- e. Third-Party Products. Ecolab or third parties may from time to time make Third-Party Products available for use with the Program or Program Equipment. Third-Party Products are subject to the applicable third-party terms and conditions and not these Program Terms. Unless the Documentation specifically requires third-party software or hardware, Ecolab is not required to ensure its compatibility with the Program or Program Equipment.

### **3. Privacy and Security.**

- a. Personal Information and Privacy. Ecolab's Data Processing General Terms and Conditions available at <https://www.ecolab.com/ecolab3dtandc> (the "Data Processing Addendum") and Privacy Policy available at <https://www.ecolab.com/privacy-policy> (the "Privacy Policy") are incorporated herein by these references. With respect to Personal Information, the Data Processing Addendum will apply where Ecolab is acting as a processor and the Privacy Policy will apply where Ecolab is acting as a controller (as each such role is defined by applicable data protection law). Customer acknowledges that the Program is not intended for the storage or processing of financial account numbers, credit or debit card numbers or other cardholder data, health information, social security numbers or other government identification numbers, or any other information that is defined by applicable law as highly sensitive or a special category of personal information, and agrees not to provide any such information. Subject to the foregoing, each party will comply with all data protection laws applicable to it and to the Personal Information that it provides or processes in accordance with the Agreement.
- b. Security of Customer Data. Ecolab maintains a security program that includes physical, technical and organizational practices and safeguards designed to protect Customer Data as described in Ecolab's Security Addendum available at: <https://www.ecolab.com/ecolab3dtandc> (the "Security Addendum"), which is incorporated herein by this reference.

### **4. Fees and Payment.**

- a. Orders; Fees; Payment Terms. All Order Forms are subject to these Program Terms and are binding upon Ecolab's acceptance. Customer will pay the fees specified in each Order Form. Fees are non-cancellable and non-refundable. Some Order Forms may include tier-based pricing based on Program utilization or other metrics or may specify additional fees for features that are not part of the base price for the initial subscription. Customer will be charged additional fees beginning in the month during which it utilizes a Program at a higher tier or uses a feature that is not included in the base price, calculated in accordance with the applicable Order Form. Unless an Order Form specifies otherwise, all fees are due and payable within thirty (30) days following the invoice date and fees for the Program subscription will begin on the Order Form date. In addition to its other rights and

remedies, Ecolab may assess interest on late payments at the rate of one-and-one-half percent (1.5%) per month or the highest rate allowed under applicable law, whichever is lower. Ecolab reserves the right at any time to change its fees for both current and future Order Forms, which changes shall be effective to Customer for the next billing period.

- b. Payment Disputes. If Customer in good faith disputes the fees, then Customer will notify Ecolab in writing on or before the payment due date. Such notice will identify the fees in dispute and include a reasonably detailed explanation of the reason. The parties will cooperate and diligently attempt to promptly resolve the dispute in accordance with Section 14. Ecolab will not charge interest or suspend Customer's access to the Program while the dispute is resolved so long as Customer complies with this Section.
- c. Taxes. Fees are exclusive of taxes, levies, duties, tariffs and other similar charges, all of which will be Customer's responsibility. If Ecolab is required to collect or pay any such amounts, Ecolab will invoice Customer and Customer will pay that amount unless it provides Ecolab with a valid tax exemption certificate authorized by the appropriate taxing authority.

## **5. Program Equipment.**

- a. General. If Customer is initiating a Program subscription for use with Program Equipment that it previously purchased or leased under different terms and conditions, then these Program Terms will not apply with respect to that Program Equipment (but will apply with respect to the Program subscription and related professional services), which will continue to be subject to the terms and conditions applicable to that purchase or lease.
- b. Equipment Rental or Lease. The following terms apply only if Customer leases Program Equipment pursuant to an Order Form that references these Program Terms:
  - (i) Program Equipment leased by Customer will remain the sole property of Ecolab. Customer shall not use the Program Equipment with any materials or products other than those recommended or approved in the Documentation or otherwise by Ecolab in writing nor alter or repair or permit any third-party to alter or repair the Program Equipment without Ecolab's prior written authorization. In the event Program Equipment is lost, damaged or destroyed, Customer shall pay to Ecolab the cost of replacement or repair at Ecolab's standard charges then in effect.
  - (ii) The lease term for leased Program Equipment will be specified in the Order Form and, if none is specified, will be twelve (12) months from the Order Form date. Unless otherwise provided in the Order Form, Customer's lease will automatically renew for successive twelve (12) month periods unless either party provides the other with written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current lease term. The initial lease term and all renewal terms are collectively referred to as the "Equipment Lease Term."
  - (iii) Upon expiration or termination of the Equipment Lease Term or earlier termination of the Agreement by either party, Customer shall, unless otherwise agreed, return all leased Program Equipment to Ecolab at Customer's sole expense in the same condition as received, ordinary wear and tear excepted. Ecolab is not responsible for any data breaches with respect to unreturned Equipment. If Customer does not return leased Program Equipment within thirty (30) days after the end of the Equipment Lease Term, Customer shall pay to Ecolab the full list price for that Program Equipment.
- c. Equipment Sale. The following terms apply only if Customer purchases Program Equipment pursuant to an Order Form that references these Program Terms:

- (i) Ecolab hereby transfers and Customer hereby accepts, ownership, title, and interest in certain Program Equipment upon delivery to Customer's site and payment of the purchase price and as further set forth in the Order Form. Program Equipment may include proprietary know-how, firmware and/or software. Customer's purchase of Program Equipment includes a non-assignable and non-transferable express but limited license to use all such know-how, firmware and/or software solely for Customer's internal business purposes during the Subscription Term and in compliance with these Program Terms and the Documentation.
    - (ii) Ecolab warrants that Program Equipment purchased by Customer will be free from material defects in workmanship and materials under normal use for twelve (12) months from the delivery date (or other period specified in the Order Form). All warranty claims must be provided by Customer to Ecolab before the expiration of the warranty period. Customer's sole remedy and Ecolab's exclusive obligation for any warranty failure will be for Ecolab to repair or replace the defective Program Equipment or, at Ecolab's election, to refund the fee paid by Customer for that Program Equipment. The warranty will be voided and will not apply if the Program Equipment has not been used in accordance with the Documentation or other written instructions from Ecolab, has been altered or repaired by anyone other than Ecolab, or has been neglected, damaged or misused, or if Customer introduces products or materials not approved by Ecolab into the Program Equipment. The warranty extends only to the original purchaser and is not transferable.
  - d. Installation Services and Fees. If Ecolab provides installation services, Customer will be charged applicable fees irrespective of whether Customer is ready and available at the designated time. If the purchase price is inclusive of installation and Customer reschedules or is not ready and available when scheduled, a separate and additional installation fee will be charged at Ecolab's then-current rates. The failure to install Program Equipment when scheduled will not delay or lengthen the Subscription Term nor will it delay or reduce the subscription fees for the Program, which shall remain due and payable in full.
  - e. Internet Access and Other Customer Responsibilities. Customer will provide a suitable location and utilities for all Program Equipment and internet access as may be necessary for Program Equipment to connect to the internet at Customer's sole cost and expense, and Customer is solely responsible for ensuring that its information technology environment is compatible with the Program Equipment and the Programs. If Program Equipment is not set up correctly or if any hardware or internet access is not functioning properly, or if Customer's information technology environment or any other programs conflict with the Program, the Program Equipment may not be able to provide data to the Program and, consequently, the information available through the Program may not be current or complete if available at all. Customer agrees to use Program Equipment solely in connection with its use of the Program and in compliance with Section 2.c. Customer assumes all risk of loss and liability arising from or pertaining to its possession, operation and use of Program Equipment.
6. **Confidentiality.** Each party may disclose or provide access to Confidential Information in connection with the provision or use of the Program or professional services hereunder. Each party shall maintain the confidentiality of the other's Confidential Information using the same degree of care that it uses to protect the confidentiality of its own similar Confidential Information. Neither party will disclose the other's Confidential Information except to its Affiliates and its and their respective employees, contractors, subcontractors, and agents to the extent reasonably required in connection with the exercise of its rights and performance of its obligations under the Agreement, provided that each is subject to confidentiality obligations at least as protective as those set forth in this Section. The foregoing will not apply to Confidential Information that (i) is or becomes publicly known without breach of the Agreement, (ii) is discovered or created by the receiving party without use of, or reference to, the Confidential Information of the disclosing party, or (iii) is otherwise known to the receiving party without confidentiality restrictions and through no wrongful conduct of the receiving party. For clarity, the Program, Ecolab Data, these Program Terms and the other terms comprising the Agreement, the Documentation, and all proprietary know-how, firmware and software included with Program Equipment are Ecolab's Confidential Information.

**7. Ownership Rights.** Each party agrees as follows:

- a. Customer. Customer owns all right, title and interest in and to all Customer Confidential Information and Customer Data. Customer hereby grants Ecolab a worldwide, non-exclusive, transferable and sublicensable license to use the same in the provision of the Program to Customer and for Ecolab's improvement thereof and otherwise for the purposes contemplated by the Agreement and Order Forms or as may be required by applicable law. Customer acknowledges that Ecolab is not a cloud storage provider and agrees that Ecolab shall not be responsible or liable for any destruction or loss of Customer Data or any other data from the Program. Upon Customer's request, Ecolab will make Customer Data available to Customer or a third party designated by Customer. The format and means for provision of Customer Data will be set forth in an Order Form that includes any applicable fees and other terms.
- b. Ecolab. Ecolab or its licensors own all right, title and interest in and to the Program and all related and underlying technology, Documentation, Ecolab Confidential Information, Ecolab Data and all derivative works, improvements, enhancements, updates and modifications to the foregoing. Customer agrees that Ecolab may use Feedback to improve and otherwise modify its products and services and hereby assigns to Ecolab all right, title and interest therein and thereto including all intellectual property and associated rights.

**8. Term and Termination.**

- a. Subscription Term. The initial subscription period for the Program will begin on the Order Form Effective Date and continue for the period set forth on the Order Form or if not specified will be three (3) years from the Order Form Effective Date or, if registering online rather than through an Order Form, from the date of Customer's initial Account set-up. Customer's subscription will automatically renew for successive twelve (12) month periods unless either party provides the other with written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current subscription period. The initial subscription period and all renewal periods are collectively referred to as the "Subscription Term."
- b. Termination. Each party may terminate the Agreement upon written notice if (i) the other party fails to cure its material breach within thirty (30) days after the date of written notice of such breach from the non-breaching party or (ii) the other party becomes subject to a petition in bankruptcy or other proceeding relating to its insolvency, receivership, liquidation or assignment for the benefit of creditors. In addition, Ecolab may terminate the Agreement if Customer fails to pay in full any amount when due and does not cure such failure within ten (10) days after being notified by Ecolab. Upon the expiration of the Subscription Term or the effective date of termination, Customer's right to access and use the Program will end.
- c. Survival. Termination shall not relieve Customer of its obligations with respect to the payment of fees. The provisions of these Program Terms that by their nature extend beyond the termination of the Agreement include but are not limited to "Fees and Payment," "Equipment Rental or Lease," "Confidentiality," "Ownership Rights," "Indemnification," "Limitation of Liability," "Governing Law and Dispute Resolution," and "Notices" survive termination.

**9. Representations and Warranties; Disclaimers.**

- a. Mutual Warranties. Each party represents and warrants that it has validly entered into the Agreement and that it has the legal power and all authority to do so and to perform its obligations hereunder.
- b. Program Warranty. Ecolab represents and warrants that (i) the Program will perform in all material respects as described in the Documentation throughout the Subscription Term, (ii) it will use commercially reasonable efforts to ensure that the Program when provided by Ecolab is free from viruses, malware and similar malicious code, and (iii) during the Subscription Term it will not

materially decrease the safeguards it uses to protect Customer Data in the Program. Ecolab may change the features and functionality of the Program during the Subscription Term, and such changes will not be considered to breach this warranty so long as the changes do not materially decrease the overall performance of the Program. All warranty claims must be provided by Customer to Ecolab in writing within thirty (30) days of discovering the issue. Customer's sole remedy for breach of the foregoing warranties will be for Ecolab to use commercially reasonable efforts to correct the non-conformity.

- c. Services Warranty. Ecolab represents and warrants that all professional services hereunder will be provided in a professional and workmanlike manner in accordance with generally accepted industry standards. All warranty claims must be provided by Customer to Ecolab in writing within thirty (30) days after performance of the applicable services. Customer's sole remedy and Ecolab's exclusive obligation for any warranty failure that Ecolab confirms will be for Ecolab to reperform those services at no charge or, at Ecolab's election, to refund the fees paid by Customer for those services.
- d. Customer Warranties. Customer represents and warrants that it has all rights, licenses and consents necessary to provide the Customer Data to Ecolab for the purposes contemplated by these Program Terms.
- e. General Disclaimer. THE FOREGOING WARRANTIES CONSTITUTE EACH PARTY'S ONLY WARRANTIES CONCERNING THE PROGRAM, PROFESSIONAL SERVICES, PROGRAM EQUIPMENT AND OTHER SUBJECT MATTER OF THE AGREEMENT. EACH PARTY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, MERCHANTABILITY, ACCURACY, SYSTEM INTEGRATION AND INTERFERENCE WITH ENJOYMENT. INSIGHTS AND OTHER PROGRAM OUTPUTS ARE PROVIDED "AS IS," AND CUSTOMER BEARS ALL RISK FROM THEIR USE AND DECISIONS BASED IN WHOLE OR IN PART THEREON. ECOLAB DOES NOT REPRESENT THAT THE PROGRAM, INSIGHTS AND OTHER PROGRAM OUTPUTS, PROGRAM EQUIPMENT OR PROFESSIONAL SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE PROGRAM OR PROGRAM EQUIPMENT WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE. CUSTOMER ACKNOWLEDGES THAT THE INTERNET AND TELECOMMUNICATION NETWORKS ARE INHERENTLY INSECURE AND THAT ECOLAB WILL HAVE NO LIABILITY FOR ANY INTERCEPTION OF, CHANGES TO, OR LOSS OF CUSTOMER DATA WHILE IN TRANSIT VIA THE INTERNET OR TELECOMMUNICATIONS PROVIDERS' NETWORKS.
- f. Specific Disclaimers. THE PROGRAM IS NOT DESIGNED NOR INTENDED FOR ANY ENVIRONMENT THAT REQUIRES FAIL-SAFE CHARACTERISTICS (INCLUDING SUPERVISOR PROCESS-CONTROL SYSTEMS) IN WHICH FAILURE COULD LEAD TO PERSONAL INJURY OR DEATH OR SEVERE PROPERTY OR ENVIRONMENTAL DAMAGE. ECOLAB SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH ENVIRONMENTS. ECOLAB DOES NOT REPRESENT THAT THE PROGRAM, INSIGHTS AND OTHER PROGRAM OUTPUTS, PROGRAM EQUIPMENT OR PROFESSIONAL SERVICES WILL ENSURE THAT ANY WATER SOURCE OR ENVIRONMENT WILL BE FREE FROM LEGIONELLA OR OTHER WATERBORNE PATHOGENS, WILL ACCURATELY ASSESS THE RISK OF LEGIONELLA OR OTHER PATHOGEN GROWTH OR WILL SUCCESSFULLY ADDRESS ASSOCIATED RISKS OR OTHERWISE ACHIEVE ANY PARTICULAR RESULTS OR OUTCOME.

## **10. Indemnity.**

- a. Ecolab Indemnity. This Section 10.a. provides Ecolab's sole obligation and Customer's exclusive remedy in the event of a claim that the Program infringes or misappropriates any intellectual property or associated rights. Ecolab shall defend Customer and its Affiliates and each of their respective officers, directors, employees and representatives ("Customer Indemnitees") from all

third-party claims that the Program infringes or misappropriates such third-party's U.S. patent, copyright, trademark, or trade secret and will indemnify and hold the Customer Indemnitees harmless from all damages and other amounts awarded to such third party by a court of competent jurisdiction in final judgment of such claim and reimburse the Customer Indemnitees for its reasonable attorney fees and expenses incurred in connection with each such claim. Notwithstanding the foregoing, Ecolab shall not have any obligation or liability to the extent arising from (i) use of the Program other than in accordance with and as expressly permitted by the Documentation or after being informed by Ecolab to cease such use; (ii) any modification of the Program other than by Ecolab; or (iii) any Customer or third-party software or hardware or the combination of the same with the Program or Program Equipment other than combinations inherent to or necessary for the proper performance of the Program. In the event of an infringement claim, in addition to its defense and indemnity obligations, Ecolab may, at its option, replace the Program with a non-infringing version, modify the Program to make it non-infringing, or terminate Customer's subscription and provide a refund of any prepaid fees for the remainder of the Subscription Term.

- b. Customer Indemnity. Customer shall defend Ecolab and its Affiliates and each of their respective officers, directors, employees and representatives ("Ecolab Indemnitees") from and against all third-party claims arising from (i) Customer Data or the failure by Customer to have all rights, licenses and consents necessary to provide the Customer Data to Ecolab for the purposes contemplated by the Agreement and to grant Ecolab the rights and licenses herein; or (ii) Customer's breach of any of the restrictions or requirements in Section 2.c.; and will indemnify and hold the Ecolab Indemnitees harmless from all damages and other amounts awarded to such third party by a court of competent jurisdiction in final judgment of such claim and reimburse the Ecolab Indemnitees for its reasonable attorney fees and expenses incurred in connection with each such claim.
- c. Procedures. As a condition to each party's obligations as the indemnitor under this Section, the indemnitee must provide the indemnifying party with prompt written notice of the claim, sole control of the defense and settlement discussions, and such assistance as the indemnifying party may reasonably request. Neither party as indemnitor may settle a claim without the prior written consent of the indemnitee on terms that include an admission of fault or liability or any obligation on behalf of the indemnitee other than the payment of amounts that will be fully satisfied by the indemnifying party. Each party, as the indemnitee, may participate in claims with counsel of its choosing at its own expense.

## **11. Limitation of Liability.**

- a. Consequential Damages Disclaimer. EXCEPT AS PROVIDED IN SECTION 11.c., NEITHER PARTY NOR ITS AFFILIATES WILL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR FOR ANY LOST PROFITS OR LOSS OF REVENUES OR EARNINGS ARISING OUT OF OR RELATED TO THESE PROGRAM TERMS OR THE OTHER TERMS COMPRISING THE AGREEMENT OR THE SUBJECT MATTER HEREOF AND THEREOF OR THE PROGRAMS, INSIGHTS AND OTHER PROGRAM OUTPUTS, PROGRAM EQUIPMENT, OR PROFESSIONAL SERVICES. THE FOREGOING SHALL APPLY EVEN IF A PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.
- b. Liability Cap. EXCEPT AS PROVIDED IN SECTION 11.c., IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THESE PROGRAM TERMS OR THE OTHER TERMS COMPRISING THE AGREEMENT OR THE SUBJECT MATTER HEREOF AND THEREOF OR THE PROGRAMS, INSIGHTS AND OTHER PROGRAM OUTPUTS, PROGRAM EQUIPMENT, OR PROFESSIONAL SERVICES EXCEED THE FEES PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE PROGRAM, PROGRAM EQUIPMENT OR PROFESSIONAL SERVICES GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE

(THE “GENERAL CAP”). ECOLAB’S AGGREGATE LIABILITY ARISING FROM A BREACH OF ITS OBLIGATIONS UNDER SECTION 3 (INCLUDING THE DATA PROCESSING ADDENDUM, SECURITY ADDENDUM AND PRIVACY POLICY) THAT RESULTS IN THE UNAUTHORIZED ACCESS TO OR USE OF CUSTOMER DATA OR PERSONAL INFORMATION WILL NOT EXCEED TWO (2) TIMES THE GENERAL CAP (THE “SPECIAL CAP”). THE FOREGOING LIMITATIONS ARE INTENDED AS A CUMULATIVE CAP AND NOT PER INCIDENT AND WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

- c. Exceptions. THE LIMITATIONS IN SECTION 11.a. AND 11.b. DO NOT APPLY TO (I) FEES AND OTHER AMOUNTS OWED BY CUSTOMER UNDER THE AGREEMENT OR TO AMOUNTS THAT ARE CUSTOMER’S RESPONSIBILITY PURSUANT TO SECTION 5.b., (II) DAMAGES ARISING FROM A BREACH BY CUSTOMER OR ANY END USER OF SECTION 2.c., (III) DAMAGES ARISING FROM A BREACH BY EITHER PARTY OF SECTION 6 (OTHER THAN WITH RESPECT TO CUSTOMER DATA, WHICH IS SUBJECT TO THE SPECIAL CAP), (IV) AMOUNTS PAYABLE PURSUANT TO A PARTY’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10, OR (V) EITHER PARTY’S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD.

- 12. **Beta and Trial Offerings.** From time to time, Ecolab may make “beta” or production-ready versions of Programs available to Customer for a limited period of time for use on a trial basis. Ecolab may charge a fee for trial use, and Customer acknowledges that the presence of a fee does not cause this Section 12 to not apply to the trial subscription. Each party may terminate a trial at any time. Notwithstanding anything in the Agreement to the contrary, if Ecolab makes the Program available to Customer for trial use, that Program is provided “AS IS” and without any warranty or indemnification. ECOLAB’S ENTIRE LIABILITY FOR ANY AND ALL CLAIMS, DAMAGES AND OTHER LIABILITIES ARISING OUT OF OR RELATED TO ALL SUCH PROGRAMS AND CUSTOMER’S USE THEREOF IS LIMITED TO FIVE HUNDRED DOLLARS (\$500) IN THE AGGREGATE. The terms and conditions in the Agreement (including these Program Terms) in effect at the time Customer elects to conduct a trial may change before Customer moves to a longer-term subscription. Customer acknowledges that the version of the Agreement in effect when Customer moves to a longer-term subscription will apply to Customer unless the parties otherwise agree in writing.

- 13. **Optional Features.** From time to time, Ecolab may make available to Customer for use in connection with the Program certain features that are not a part of Customer’s subscription and, in some cases, such features may be subject to additional terms and fees. Customer’s access to those features may be conditioned on Customer’s agreement to the additional terms and fees, and if Customer is unwilling to agree to those terms and pay the applicable fees then neither Customer nor any of its End Users is permitted to use those features. Use of any such feature by Customer or an End User will constitute Customer’s agreement to the additional terms and fees.

#### 14. **Governing Law and Dispute Resolution.**

- a. Dispute Resolution. In the event of any dispute or claim arising out of or related to these Program Terms or the other terms comprising the Agreement including a dispute regarding an alleged breach, the parties will work together in good faith first to informally resolve the dispute internally by escalating it as necessary to progressively higher levels of management for discussion. If a dispute cannot be resolved within thirty (30) days from the date written notice of such dispute is provided by one party to the other, the parties shall use reasonable efforts to resolve the dispute pursuant to mutually agreed, non-binding mediation to be conducted in English. If the parties are unable to identify a mutually acceptable mediator and time for the mediation within sixty (60) days after either party requests mediation or if the dispute remains unresolved at the conclusion of the mediation, then the dispute shall be finally settled by binding arbitration in Saint Paul, Minnesota under the American Arbitration Association Commercial Arbitration Rules by three arbitrators or, as the parties may otherwise agree, a single arbitrator, in each case appointed in accordance with such rules. The arbitral proceedings and all pleadings and written evidence shall be in English language.



Any written evidence originally in another language shall be submitted in English translation accompanied by the original or true copy thereof. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The costs of the arbitration, including administrative and arbitrator's fees, shall be shared equally by the parties. Each party shall bear the cost of its own attorneys' fees and other costs incurred in connection with the arbitration.

- b. **Governing Law.** These Program Terms and all other terms comprising the Agreement and all disputes arising from or related to the Program, Program Equipment and any professional services provided hereunder shall be governed by and construed in accordance with (i) if Ecolab or its Affiliate that is invoicing Customer is located in the United States, the laws of the State of Minnesota without giving effect to the choice of law principles thereof and (ii) if Ecolab's Affiliate that is invoicing Customer is located outside the United States, the laws of the jurisdiction in which the local Ecolab Affiliate is located. If allowable by applicable law, each party agrees to submit to the exclusive jurisdiction and venue of the state and federal courts in Saint Paul, Minnesota. The parties agree to exclude and hereby disclaim the application of the U.N. Convention on Contracts for the International Sale of Goods (1980).
  - c. **Injunctive Relief.** Notwithstanding the alternative dispute resolution procedure set forth in this Section, and subject to Section 14.b, a party may seek injunctive relief from any court of competent jurisdiction to prevent irreparable harm to the moving party related to the misuse, misappropriation, disclosure, or infringement of its confidential or proprietary information, trade secrets, and intellectual property.
- 15. **Federal Government End Users.** This Section applies if Customer is or the Program is used in support of the United States government. The Program and related services are commercial items, and any software therein is commercial computer software (per Federal Acquisition Regulation ("FAR") 12.211 and 12.212 and Department of Defense FAR Supplement ("DFARS") 227.7102 and 227.7202, as applicable). Government Customers will have only those rights in technical data, computer software and computer software documentation set forth in the Agreement, except that Department of Defense Customers may acquire additional rights in technical data pursuant to DRARS 252.227-7015(b).
  - 16. **Notices.** Any notice or other communication required or permitted hereunder shall be given in writing if to Ecolab at 1 Ecolab Place, St. Paul, Minnesota, 55102 USA, Attn: General Counsel, and if to Customer at the address specified in the Order Form or, if registering online rather than through an Order Form, at the address provided in the Account registration.
  - 17. **Assignment.** Each party may, with written notice to the other, assign the Agreement to a successor to all or substantially all of the business or assets of such party to which the Agreement relates, including by operation of law, merger, reorganization, change of control, consolidation, reorganization, or otherwise. In addition, Ecolab may use subcontractors in the provision of the Program and performance of services hereunder. Neither party may otherwise assign the Agreement or its rights and obligations hereunder without the other party's prior written consent.
  - 18. **Entire Agreement.** The Agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior and contemporaneous oral or written agreements between the parties with respect to the subject matter thereof. Customer has reviewed and agrees to all of the terms, conditions and policies incorporated herein by reference (including the Data Processing Addendum, Security Addendum and Privacy Policy referenced in Section 3). URLs are understood to also refer to any successor URLs and information and materials linked from within the terms and conditions at such URLs.
  - 19. **General.** The Agreement is in the English language only, and the English language version shall control in all respects. In the event that the Agreement or any part thereof is translated into another language, such translation shall not be binding upon the parties. The Agreement may not be modified other than by written mutual agreement, except that changes to the terms incorporated by reference to a URL will apply once accepted by Customer or, if Ecolab notifies Customer of the updated terms within the Program, through Customer's Program account, by email, or in writing, upon the earlier of entering into the next Order Form

or upon the next subscription or lease renewal. If any provision of the Agreement is found unenforceable, it shall be deemed modified to the extent necessary to render it enforceable, preserving the intent of the parties as set forth herein to the fullest extent possible. No delay or omission by a party in enforcing its rights or remedies under the Agreement shall be deemed to be a waiver thereof, nor shall a waiver of any right or remedy on one occasion be deemed a waiver on any other occasion. Terms and conditions contained in any purchase order, acknowledgement, request for proposal or other documents or communications by Customer that are different from or in addition to the terms set forth in the Agreement shall not be binding on Ecolab. The parties are independent contractors, and nothing in the Agreement shall be construed to create a partnership, joint venture, agency or other relationship. Except for Customer's payment obligations, neither party will be liable to the other if performance is delayed by any Act of God, natural disaster, epidemic or other public health emergency, fire, governmental action (including the imposition of tariffs), act of war, civil unrest, labor strike, or any other event outside of a party's reasonable control. In the event of a conflict between the following terms, the order of precedence shall be: (1) the Data Processing Addendum, (2) the applicable Order Form, (3) these Program Terms, (4) all other Addenda and terms incorporated by reference herein, and (5) the Documentation.

## DEFINITIONS ADDENDUM

“Affiliate” means an entity that controls, is controlled by, or is under common control with a party, where control is defined as, directly or indirectly, ownership of more than 50% of the voting interest of the entity.

“Confidential Information” means all information disclosed or made available by one party to the other that is designated in writing as proprietary and/or confidential, or should reasonably be understood to be confidential by the recipient.

“Customer Data” means information, data, materials and other content provided to the Program by Customer, End Users, or Program Equipment.

“Documentation” means the official product documentation for the applicable Program and Program Equipment.

“Ecolab Data” means (i) Program usage and performance data, statistics, telemetry information and other data and information generated from the provision of the Program and professional services or use by Customer and its End Users of the Program and professional services that does not identify Customer or any End User or other natural person, and (ii) Customer Data that is anonymized, pseudonymized, de-identified and/or aggregated. For clarity, in no case will Customer’s Confidential Information be considered to be Ecolab Data.

“End User” means any user of the Program, including any employee, contractor, or service provider of Customer or an Affiliate that accesses or uses the Program through Customer’s account.

“Feedback” means all feedback regarding the Program and other ideas or suggestions provided to Ecolab by Customer or any End User.

“Order Form” means an ordering document (whether a purchase order, statement of work, quote, or other format) specifying the Program or professional services to be provided hereunder that is entered into between Customer and Ecolab or any of their respective Affiliates, including any addenda and supplements thereto. Order Forms form a part of the Agreement.

“Personal Information” means any personal information, as defined by applicable data protection laws, that is processed under or in connection with the Agreement.

“Program Equipment” means hardware provided by Ecolab for use in connection with the Program, including gateways, IoT devices, and controllers.

“Program Terms” means these Ecolab Program Terms and Condition, including as referenced under any other name or defined term in any of the other terms and conditions comprising the Agreement.

“Third-Party Products” means non-Ecolab platforms, software, applications, add-ons, services, and products.