

ECOLANE USA INC.
SOFTWARE LICENSE & SERVICES AGREEMENT

THIS SOFTWARE LICENSE & SERVICES AGREEMENT (this “**Agreement**”) is made and entered into as of [REDACTED], XX, 2016, by and between Ecolane USA Inc., a Delaware corporation (“**Licensor**”), located at 940 West Valley Road, Suite 1400, Wayne, PA 19087, and [REDACTED] (“**Licensee**”) located at [REDACTED]. Licensor and Licensee may be referred to individually as a “**Party**”, or together as the “**Parties**”.

1. AGREEMENT DEFINITIONS

- 1.1 “**Confidential Information**” means information relating to or disclosed in the course of, or in connection with this Agreement, which is, or should be reasonably understood to be, confidential or proprietary to a Party, including, but not limited to, information concerning such Party’s business, products, services, content, finances, subscribers, source code, tools, protocols, product designs and plans, customer lists and other marketing and technical information, the existence of any business discussions, negotiations or agreements between the Parties, the terms of this Agreement, and any other unpublished information.
- 1.2 “**Contractor**” means a non-employee individual or business hired by Licensee to perform on Licensee’s behalf certain functions permitted hereunder.
- 1.3 “**Documentation**” means Licensor’s User Guides and Training Manuals and any other written materials provided by Licensor for aid in the use and operation of the Licensor Software that Licensor indicates in writing as constituting “Documentation” under this Agreement.
- 1.4 “**Intellectual Property Rights**” means all patents, inventions, trademarks, service marks, copyrights, moral rights, trade secrets, database rights, rights in designs, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration, and whether subsisting in the United States or any other part of the world, together with all or any goodwill relating to the same.
- 1.5 “**License Date**” has the meaning set forth in Section 3.
- 1.6 “**Licensor Software**” means Licensor’s Ecolane DRT software, in object code format, licensed to Licensee hereunder and, in the event Licensee purchases applicable license, all updates and upgrades provided under the Support Services, if any. The “Mobile Module” shall be deemed part of the Licensor Software for all purposes except Section 2.1(a).
- 1.7 “**Mobile Module**” means the portion of Licensor Software that is installed on a mobile unit.
- 1.8 “**Support Services**” means Licensor’s support and maintenance services described on Exhibit B.
- 1.9 “**Support Period**” means the time period during which Licensee is current in license fees.

2. SOFTWARE LICENSE

- 2.1 **License Grant.** Subject to the terms and conditions hereof, Licensor grants to Licensee a non-exclusive, limited, non-transferable, without right to sublicense, license to: (a) remotely access and use the Licensor Software, which Licensor Software shall be hosted on Licensor’s or its designated third party’s servers, and use the Documentation, all for Licensee’s own internal business uses, and (b) load or install, store and run the Mobile Module on a mobile unit approved by Licensor, for Licensee’s own internal business uses. Licensor shall designate the URL and password formats for Licensee’s access of the Licensor Software.
- 2.2 **License Restrictions; Licensee Rights and Obligations.**
Licensee shall not:
 - a. modify, make derivative works of, reverse engineer, disassemble, decompile, or otherwise attempt to discover the source code for the Licensor Software,
 - b. allow the Licensor Software to be combined with or become incorporated in any other computer programs,

- c. distribute, encumber, sell, rent, lease, sublicense, or otherwise transfer rights to the Licensor Software (except as expressly permitted hereunder),
 - d. remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Licensor Software, or
 - e. Except as set forth in Section 2.3 or as otherwise may be agreed to in writing by Licensor, permit any third party to use the Licensor Software or Documentation or use the Licensor Software or Documentation on behalf of or for the benefit of any third party in any way whatsoever.
 - 2.3 **Copies; Records.** Licensee may make only so many copies of the Mobile Module as are reasonably necessary for operational security and for its permitted use hereunder. Licensee shall supervise and control, and maintain accurate and complete records regarding the use and location of the Mobile Module Software and Documentation, and the access to the Licensor Software.
 - 2.4 **Limited Use by Contractors.** Licensee may allow its Contractors to exercise the rights granted hereunder on behalf of Licensee and solely for Licensee's benefit, provided that (a) Licensee ensures that such Contractors use the Licensor Software only in accordance with the terms of this Agreement and (b) Contractors are subject to confidentiality obligations substantially similar to Licensee's obligations herein. Licensee shall be fully responsible for any breach of this Agreement caused by Contractors.
3. **DELIVERY ACCESS.** On or before the 120 days following the date hereof, Licensor shall (a) deliver the number of copies of Software and Documentation, all as may be identified on Exhibit A, by electronic means, (b) provide access to the Licensor Software. The date of such delivery and access shall be referred to herein as the "License Date". Licensor shall use commercially reasonable efforts to make the Licensor Software available for the hours and days as described in Exhibit A beginning on the License Date. Scheduled maintenance done by Licensor will be done outside Licensee's scheduled hours of availability as identified in Exhibit B.
4. **PROPRIETARY RIGHTS.** Licensor (and/or its affiliates or vendors) retain all right, title and interest in and to the Licensor Software and Documentation, including, without limitation, all Intellectual Property Rights related thereto and all modifications thereof. The Parties acknowledge each other's trademark rights, and except as permitted by Section 15.11, neither Party shall use the other Party's trade name or trademarks in any manner whatsoever absent the other Party's prior written consent. Nothing in this Agreement assigns any rights, title or interest in any Licensor's (and/or its affiliates' or vendors') Intellectual Property Rights to Licensee.
5. **SERVICES.**
- 5.1 **Support Services.** Licensor shall provide Support Services commencing on the License Date on the terms and conditions set forth on Exhibit B.
 - 5.2 **Installation Assistance, Training or Other Services.** If Licensee and Licensor have agreed that Licensor will provide Licensee with any installation assistance of Mobile Modules, training or other services, the terms and conditions of such services will be identified on Exhibit A or another Exhibit to this Agreement.
 - 5.3 **Custom Development.** If Licensor agrees to perform any customized software development work for Licensee that the parties intend for Licensee to own, Licensee will have no such ownership rights unless the parties mutually execute a written addendum to this Agreement that fully satisfies the following conditions: (i) the scope and description of the mutually agreed work product is described, and (ii) the addendum includes an express statement that such work product is "intended to be a work made for hire for, and owned by, Licensee". Notwithstanding the foregoing or any content of any such addendum, in no case whatsoever does Licensor assign or otherwise transfer to Licensee any right, title or interest in or to Licensor Software, Documentation or any other preexisting Intellectual Property Rights of Licensor.
6. **GENERAL OBLIGATIONS OF LICENSEE**
- 6.1 Licensee shall (a) promptly provide Licensor and its authorized agents with such information and assistance as may be reasonably requested in order to carry out its obligations hereunder, (b) without charge, provide suitable office accommodation, materials, equipment and support services (including use of telephone and support services) reasonably requested in connection with performance of any services at Licensee's premises ordered by Licensee under Section 5, (c)

procure all necessary rights from third parties (including intellectual property licenses in relation to Licensee's computer software) which are from time to time required in order for Licensor to provide services in an authorized and legal manner, and (d) with ten (10) days advance notice, permit Licensor and its authorized representatives to enter on to Licensee's premises or mobile units where the Mobile Modules or Documentation are located or from where the Licensor Software is accessed or services are provided in order to verify Licensee's compliance with the terms of this Agreement. In connection with this review, Licensor may inspect records directly related to Licensee's performance of this Agreement or use of Licensor Software or Documentation kept by or on behalf of the Licensee and make copies of the same.

7. FEES AND PAYMENT.

- 7.1 **Payment.** Licensee agrees to pay Licensor the fees specified in Exhibit A in accordance with the payment schedules set forth in Exhibit A. The Parties agree to the allocation of the fees and payments to software, service (if any) and hardware (if any) as designated on Exhibit A. Licensee shall pay Licensor's invoices in U.S. dollars to Licensor's address set forth on Exhibit A no later than thirty (30) days following the receipt of a written invoice. Any overdue payments will bear interest at the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate allowed under applicable law until the overdue payment and accrued interest are fully paid.
- 7.2 **Taxes.** Licensee shall be responsible for any and all sales, use, excise, value-added or similar taxes that may be due under this Agreement and Licensor will use commercially reasonable efforts to identify any applicable taxes on its invoice to Licensee. Licensee will pay applicable taxes on the invoice or, in lieu of the payment of any such taxes; Licensee may provide Licensor with a certificate acceptable to the taxing authorities exempting Licensee from payment of these taxes. Notwithstanding the foregoing, in no event shall Licensee be obligated to pay any tax paid or owed on income or net worth of Licensor or paid for Licensor's doing business in any particular locality or jurisdiction.

8. WARRANTIES.

- 8.1 **Licensor Software Warranties.** With respect to the Licensor Software, Licensor warrants that: (a) the tangible media on which the Mobile Module resides, if applicable, shall be free of material defects in workmanship, design and material, (b) neither the Licensor Software nor the Documentation infringes, misappropriates or otherwise violates any U.S. Intellectual Property Rights of any third parties, (c) the Licensor Software does not contain any computer viruses, Trojan horses, time bombs, cancel bots or other computer programming routines that are intended to detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information, and (d) Licensor Software will operate substantially in accordance with the Documentation. The warranties set forth in Section 8.1 ("Software Warranties") shall survive for a period of three hundred sixty five days (365) days following the License Date ("Warranty Period"). In the event of a breach of a Software Warranty reported to Licensor in writing during the Warranty Period, Licensee's sole remedy for such breach shall be to have Licensor use commercially reasonable efforts to promptly correct, replace or provide a work around for such error or failure, at no charge to Licensee, or in Licensor's discretion, provide an equitable refund to Licensee. The Software Warranties and remedies apply only to the most recent version of the Licensor Software, and shall not apply to any breach, fault or error that has been caused by Licensee's failure to use the Licensor Software in accordance with the Documentation requirements, any misuse, corruption, or abuse of, or modification to, the Licensor Software by Licensee or any use of the Licensor Software with any software or equipment not approved in advance in writing by Licensor.
- 8.2 **Licensor Services Warranties.** Licensor warrants that all services that are performed under this Agreement will be performed in a professional and workmanlike manner by qualified personnel, and Licensor has the required skills and experience to perform such services and such warranties shall survive for thirty days following performance of the services. Licensee's sole remedy for breach of a warranty in Section 8.2 shall be to notify Licensor of any breach within ninety (90) day following performance of the services and have Licensor use commercially reasonable efforts to promptly correct, replace or provide a work around for such breach, at no charge to Licensee, or in Licensor's discretion, provide an equitable refund to Licensee.
- 8.3 **Licensor General Warranties.** Licensor represents and warrants that Licensor owns, or has all necessary rights to, the Licensor Software and Documentation, and has all necessary rights and

authority to grant the rights granted hereunder to Licensee and to carry out its obligations hereunder.

- 8.4 **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 action, do not violate in any material respect the terms of any law, regulation, or court order to which Licensor is subject, do not violate the terms of any material agreement to which Licensor is a party, and are not subject to the consent or approval of any third party, (b) this Agreement is the valid and binding obligation of such Party, enforceable against Licensor in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization or other similar laws relating to creditors' rights generally, or general equitable principles, (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, and (d) such Party has secured or shall secure all material permits, licenses, regulatory approvals and registrations to perform its obligations hereunder.
- 8.5 **Disclaimer of Warranty.** EXCEPT AS SET FORTH IN SECTIONS 8.1 to 8.4, LICENSOR DOES NOT MAKE, AND HEREBY DISCLAIMS, ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NONINFRINGEMENT OF THIRD PARTIES' RIGHTS, AND SECURE, ERROR-FREE OR UNINTERRUPTED OPERATION.
- 8.6 **Limitation of liability.** EXCEPT FOR BREACHES OF SECTION 9 OR INDEMNITY OBLIGATIONS UNDER SECTIONS 10, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR DATA, INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF THE PARTY SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM AGAINST THE OTHER BY ANY THIRD PARTY. LICENSOR'S LIABILITY TO LICENSEE UNDER THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE AMOUNT ACTUALLY PAID BY LICENSEE TO LICENSOR PURSUANT TO THIS AGREEMENT DURING THE TWELVE MONTH PERIOD PRECEDING THE DATE OF ANY CLAIM. A "CLAIM" IS WHEN ANY OCCURRENCE GIVING RISE TO LICENSOR LIABILITY HEREUNDER IS KNOWN TO LICENSEE OR SHOULD BE KNOWN.

Licensee 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 in which Ecolane Products has been incorporated or installed) in conjunction with the use or operation of Licensor Software and Mobile Modules (the "Ecolane Products"), (ii) Licensor shall not be liable to Licensee for any claim or action including costs arising out of the use or misuse of any motor vehicle operated by the Licensee in conjunction with or separate from the use of the Ecolane Products, including any personal injury or property damage claim or action, and Licensee shall defend, indemnify and hold Licensor harmless from any such claim or action, and (iii) Licensee shall include this paragraph, or the substance thereof, in any third party agreements pursuant to which Ecolane Products are provided to a third party.

Licensee agrees that, to the fullest extent permitted by law, Licensor shall not be liable to Licensee or any third party for any special, indirect or consequential damages of any kind arising directly or indirectly from the use of or inability to use Ecolane Products including any claim for lost revenue, profit, data, privacy, security, interruption or loss of service or use of the products, or any loss of business even if Licensor has been advised of the possibility of such damages.

9. CONFIDENTIALITY.

- 9.1 **Confidentiality Obligations.** Each Party acknowledges that Confidential Information may be disclosed to the other Party during the course of this Agreement. Each Party agrees that, during and following the term of this Agreement, it shall hold in strict confidence the other Party's Confidential Information and will take reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information, to (a) prevent use of the other Party's Confidential Information for any purpose other than to carry out its rights and obligations hereunder, and (b) prevent the disclosure of the other Party's Confidential Information, other than to its employees or

Contractors who must have access to such Confidential Information for such Party to exercise its rights and perform its obligations hereunder and who each agree to be bound by agreements with a duty of confidentiality no less protective of confidential information than provided herein.

- 9.2 **Exclusions.** The Parties' obligations set forth in Section 9.1 shall not apply with respect to any portion of the Confidential Information that: (a) was in the public domain at the time it was disclosed to or observed by the receiving Party; (b) entered the public domain through no fault of the receiving Party; (c) is rightfully received by the receiving Party from a third party without a duty of confidentiality; (d) is independently developed by the receiving Party without reference to or incorporation of the other Party's Confidential Information; (e) is disclosed in accordance with the state Public Information Act, except that the receiving Party will disclose only such information as is legally required and will use reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed and will provide the disclosing Party notice of such possible disclosure prior to disclosure in order to allow an opportunity for the disclosing Party to contest such disclosure; or (f) is disclosed with the other Party's prior written approval.
- 9.3 **Return of Confidential Information.** Each Party agrees to return to the other Party or, at the request and instruction of the disclosing Party, destroy, and certify that it has destroyed, all material embodying Confidential Information (in any form or medium and including, without limitation, all summaries, copies and excerpts of Confidential Information) at any such time as the disclosing Party may so request.

10. INDEMNIFICATION.

- 10.1 **Indemnification by Licensor.** Licensor shall to the extent allowed by state law indemnify, defend and hold harmless Licensee, and its officers, directors, employees and agents, from and against any and all claims made or threatened by any third party and all related losses, expenses, damages, costs and liabilities, including reasonable attorneys' fees and expenses incurred in investigation or defense ("Damages"), to the extent such Damages arise out of or relate to a third-party claim that the Licensor Software, Documentation or services provided by Licensor hereunder, or Licensee's use of the same in accordance with this Agreement, infringe, misappropriate, or otherwise violate any third party's U.S. Intellectual Property Rights. Licensor's indemnity obligation shall not extend to claims based on an unauthorized modification, combination or use of the Licensor Software by Licensee.
- 10.2 **Notification of 3rd Party Claims.** Licensor will promptly notify Licensee of any threat, warning, claim or action against Licensor or suppliers, that could have an adverse impact on Licensee's use of the Licensor Software.
- 10.3 **Remedies.** If Licensor informs Licensee or Licensee determines that it must discontinue use of the Licensor Software, the Documentation, or any service furnished under this Agreement because of an existing or anticipated claim, or adjudication, that the Licensor Software, Documentation, or service infringes, misappropriates or otherwise violates any intellectual property right of a third party, Licensor, at its own expense and in its reasonable discretion, shall either: (a) secure for Licensee the right to continue using the Licensor Software, Documentation, or service; (b) replace or modify the Licensor Software, Documentation, or service to make it non-infringing; provided, however, that such modification or replacement shall not degrade the operation or performance of the Licensor Software, Documentation, or service; or if Licensor determines (a) or (b) to be commercially unreasonable, then (c) refund to Licensee any unamortized portions of the fees paid by Licensee, based on a straight line amortization over the initial term of this Agreement.
- 10.4 **Indemnification by Licensee.** Licensee shall indemnify, defend and hold harmless Licensor, and their officers, directors, employees, and agents ("Indemnified Parties") from and against any and all claims made or threatened by any third party and all Damages, to the extent such Damages arise out of or relate to (a) Licensee's breach of the obligations assumed under this Agreement, or (b) an infringement or related claim that unauthorized modification, combination or use of the Licensor Software made by Licensee.
- 10.5 **Defense and Settlement.** A Party seeking indemnity ("Indemnified Party") shall provide the other Party ("Indemnifying Party") prompt notice of any such claim made against it for which it is entitled to indemnity hereunder. Each party shall cooperate with the other party and in the defense of any such claim, suit or proceeding, including appeals, negotiations and any settlement or compromise

thereof, provided that Indemnifying Party shall control the defense, negotiations and settlement or compromise thereof and shall keep the Indemnified Party informed of the proceedings and review and consider input from the Indemnified Party; provided, that Indemnified Party shall be given the right to consent to the terms of any settlement or compromise with respect to such matter, and such approval shall not be unreasonably withheld by Indemnified Party.

- 11. EXPORT CONTROL.** The Parties agree that Licensee shall not, and shall not permit, use of the Licensor Software and Documentation outside of the United States and Canada. To the extent Licensee seeks to use Licensor Software and Documentation outside of the United States and Canada, Licensee shall be solely responsible for full compliance with all export and import laws and restrictions and regulations of any United States or foreign agency or authority, and shall obtain and bear all expenses relating to any necessary licenses and/or exemptions with respect to the same.
- 12. NOTICES.** Any notice, approval, request, authorization, direction or other communication under this Agreement will be given in English in writing and will be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered by confirmed facsimile; (ii) on the delivery date if delivered personally to the party to whom the same is directed; (iii) one business day after deposit with a commercial overnight carrier, with written verification of receipt; or (iv) five business days after the mailing date, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available. Licensor's and Licensee's Addresses for receipt of notices are provided on Exhibit A.
- 13. TERM AND TERMINATION.**
- 13.1 **Term.** Unless terminated earlier in accordance with Section 13.2, this Agreement shall remain in effect for the applicable term or terms set forth on Exhibit A, as the term or terms may vary for the license to the Licensed Software and Documentation and the Support Services or other services. The term of the agreement will commence upon contract signing and will continue for as long as license fees are maintained.
- 13.2 **Termination; Effect of Termination.** A Party may terminate this Agreement prior to the expiration of an applicable term as follows: (a) if the other Party breaches a material obligation under this Agreement, and fails to cure such breach within thirty (30) days from the date it receives from the non-breaching Party a written notice of the breach and a demand for cure, (b) immediately by written notice if the other Party (i) materially breaches Section 9, or (ii) files a petition in bankruptcy, makes a general assignment for the benefit of its creditors, has a receiver appointed or applied for it, or winds up or liquidates. Upon termination, Licensee shall return the Licensor Software and Documentation to Licensor, and pay all accrued but unpaid fees and expenses, provided, this shall in no way limit any legal or equitable remedies that Licensor may be entitled to. Any fees paid by Licensee for services not performed by Licensor as of the termination date will be refunded, within 90 days following termination.
- 14. SURVIVAL.** Sections 1, 2.2, 4, 8.5, 8.6, 9, 10, 12, 13, 14 and 15 shall survive termination of this Agreement for any reason.
- 15. GENERAL**
- 15.1 **Entire Agreement.** This Agreement (including the Exhibits) constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior and contemporaneous proposals, agreements and communications, whether oral or written, between the parties relating to the subject matter hereof, and all past courses of dealing or industry custom. This Agreement may be amended only by a writing signed by the duly authorized representatives of both Parties.
- 15.2 **Independent Contractors.** In performing this Agreement, the Parties are independent contractors, and nothing contained in this Agreement shall be construed or implied to create an agency, partnership or employer and employee relationship between the Parties. Except as expressly set forth in this Agreement, at no time shall either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.
- 15.3 **Assignment.** Neither Party may assign this Agreement or any right, interest or benefit under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld; provided that in the event of a change in control of a Party, except for a

change of control of Licensee to a direct or indirect competitor of Licensor, either Party shall have the right to assign this Agreement to a successor who acquired substantially all of the assets or equity of such Party. Subject to the foregoing, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, Licensor may subcontract the performance of any or all of its obligations under this Agreement, provided it remains directly liable to Licensee.

- 15.4 **No Third Party Beneficiaries.** The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing in this Agreement, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.
- 15.5 **Severability/Waiver.** If any provision in this Agreement should be held illegal or unenforceable by a court having jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent, or severed from this Agreement if no such modification is possible, and other provisions of this Agreement shall remain in full force and effect. A waiver by either Party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof.
- 15.6 **Dispute Resolution.** In the event any controversy or claim arises in connection with any provision of this Agreement, or in connection with the rights or obligations of the Parties to this Agreement, the Parties shall try to settle their differences amicably between themselves by referring the disputed matter to the appropriate executives at the Director level or higher for discussion and resolution. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and as soon as possible but no later than fifteen (15) days after such notice such representatives of the Parties shall meet for attempted resolution by good faith negotiations. If such representatives are unable to resolve such dispute within thirty (30) days of initiating such negotiations, either Party may seek the remedies available to such Party under law. The parties agree that the State of [REDACTED] shall be the venue where disputes are settled.
- 15.7 **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of [REDACTED], without regard to its conflicts of law principles or to the United Nations Convention on Contracts for the International Sale of Goods. For purposes of all claims brought under this Agreement, each Party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts located in State of [REDACTED]. Notwithstanding anything to the contrary set forth in this Agreement, the Parties agree that any threatened or actual violation of Sections 2, 4 or 9, will cause irreparable harm and injury to the Licensor and Licensor shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to an injunction enjoining and restraining Licensee from doing or continuing to do any such act and any other violations or threatened violations of this Agreement, and for purposes of such injunction, each Party hereby irrevocably submits to the exclusive jurisdiction and proper venue of the state and federal courts located in State of [REDACTED].
- 15.8 **Force Majeure.** Neither Party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of circumstances beyond the reasonable control of such Party including acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs (whether or not by that Party), strikes and other industrial disputes (in each case, whether or not relating to that Party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions.
- 15.9 **Headings; Interpretation.** The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of the Agreement. The expression "person" means any individual, entity, partnership, association, governmental body or the like. The words "include", "includes", "including" and "included" will be construed without limitation. This Agreement shall be construed fairly according to its terms, without regard to the identity of the drafter of any provision in the Agreement.

- 15.10 **Counterparts; Facsimile.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one agreement. Facsimile signatures shall be deemed original signatures.
- 15.11 **Publicity.** Neither Party will make any public statements regarding the existence of this Agreement nor the relationship described herein, without the prior written consent of the other Party, except as required by law or as otherwise provided for herein. Notwithstanding the foregoing, Licensor shall have the right to use Licensee's name in customer lists that identify a substantial number of Licensor's customers, and Licensor shall provide a copy of any such listing to Licensee to the extent distributed to any third parties.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each Party has caused this Software License & Services Agreement to be executed by its authorized representative to be effective as of the date hereof.

Ecolane USA Inc.

[LICENSEE, STATE]

Signature: _____

Signature: _____

Printed Name: Steve Ross

Printed Name: _____

Title: CEO

Title: _____

Date: _____

Date: _____

[Remainder of page intentionally left blank]

EXHIBIT A
License Terms

This Exhibit A is made part of and incorporated in that certain Software License & Services Agreement (“**Agreement**”), dated [REDACTED], by and between Ecolane USA Inc., a Delaware corporation (“**Licensee**” or “**Ecolane**”), and [REDACTED] (“**Licensee**” or “**Customer**”).

A. Pricing/Payment

<i>BEST AND FINAL OFFER</i>				
<i>Purchase of Paratransit Scheduling and Dispatching System Software</i>				
<i>Procurement No. 16-0023</i>				
<i>Due Wednesday, May 4, 2016 4 pm Central</i>				
Capital Costs				
These costs are one time, no re-occurring costs to set up the system and purchase the necessary hardware and/or software license(s). Any per vehicle charge not already noted below needs to be calculated for 7 vehicles (units).				
Item No.	Description	Units	Unit Price	Total Offer
1	Base Software License	<u>7</u>	\$ 2,555.00	\$ 17,885.00
1a.	Other Software License	—	\$	\$
	Specify:			
2	Required Vehicle Hardware (MDT)	—	\$	\$
2a.	Additional Required Vehicle Hardware (Mounting, Wiring, etc.)	—	\$	\$
3	Project Management (Excludes Travel Expenses)	<u>10</u>	\$ 990.00	\$ 9,900.00
3a.	Travel Expenses	<u>3</u>	\$ 2,700.00	\$ 8,100.00
3b.	Other Project/Set Up Costs	—	\$	\$
	Specify:			
4	Onsite Vehicle Installation	—	\$	\$
5	Training (Onsite)	<u>12</u>	\$ 990.00	\$ 11,880.00
Total Capital Cost Offer (Item 1 through 5):				\$ 47,765.00

Terms based off of 4 major milestones:

40% at contract signing, 20% upon completion of server set-up, 20% upon reporting and training, and 20% upon final sign off of project completion

Operating Costs (Annual Costs)

These are the reoccurring costs to maintain the base AVL system. All costs should be calculated on an annual basis. Any per vehicle charge not already noted below needs to be calculated for 7 vehicles (units). For Year 1, provide the detailed breakdown of costs for items 1-5 and the total annual operating cost offer. For Years 2-5, only the total annual operating cost offer is necessary.

Year 1 Breakdown

Item No.	Description	Units	Unit Price	Total Offer
1	Annual License/Subscription Fee	___	\$	\$ -
2	Annual Data Plan Fee	___	\$	\$ -
3	Annual Hosting Fee	___	\$	Included
4	Annual Support and Maintenance (There is no charge for year 1 Support and Maintenance)	<u>7</u>	\$ 700.00	\$ 4,900.00
5	Other Annual Fees	___	\$	\$ -
	Specify:			
Year 1 Total Annual Operating Cost Offer (Item 1 through 5):				\$ -
Year 2 Total Annual Operating Cost Offer :				\$ 4,900.00
Year 3 Total Annual Operating Cost Offer :				\$ 4,900.00
Year 4 Total Annual Operating Cost Offer :				\$ 4,900.00
Year 5 Total Annual Operating Cost Offer :				\$ 4,900.00

Ecolane USA, Inc.

Optional Item Costs

These costs are for optional items that will not be factored into the scoring of the Cost Proposals. Please breakdown the capital costs and ongoing annual operating cost for each option.

Item No.	Description	Units	Unit Price	Total Offer
1	Option #1 Specify: <u>Electronic Signature Capture for Tablets</u>	7	\$ 200.00	\$ 1,400.00
	Capital Costs			
1a.	Option #1 Specify: <u>Maintenance for Electronic Signature Capture for Tablets</u>	7	\$ 40.00	\$ 280.00
	Annual Operating Costs			

Item No.	Description	Units	Unit Price	Total Offer
2	Option #2 Specify: <u>Web Based Booking for Clients</u>	1	\$ 12,995.00	\$ 12,995.00
	Capital Costs			
2a.	Option #2 Specify: <u>Maintenance for Web Based Booking for Clients</u>	1	\$ 2,599.00	\$ 2,599.00
	Annual Operating Costs			

Item No.	Description	Units	Unit Price	Total Offer
3	Option #3 Specify: <u>Customer Service and Feedback Module</u>	1	\$ 6,995.00	\$ 6,995.00
	Capital Costs			
3a.	Option #3 Specify: <u>Maintenance for Customer Service and Feedback Module</u>	1	\$ 1,399.00	\$ 1,399.00
	Annual Operating Costs			

Item No.	Description	Units	Unit Price	Total Offer
4	Option #4 Specify: <u>SMS Text Msg Notifications (Includes 10,000 SMS Text Msg Credit)</u>	1	\$ 12,995.00	\$ 12,995.00
	Capital Costs			
4a.	Option #4 Specify: <u>Maintenance for SMS Text Msg Notifications</u>	1	\$ 1,399.00	\$ 2,599.00
	Annual Operating Costs			


Item No.	Description	Units	Unit Price	Total Offer
5	Option #5 Specify: <u>Credit for SMS Text Msgs (bought as needed)</u>	1	\$ 1,500.00	\$ 1,500.00
	Capital Costs			
5a.	Option #5 Specify:	—	—	
	Annual Operating Costs			

I understand that the City of Waukesha reserves the right to reject this offer, but that this offer shall remain open and not be withdrawn for a period of one hundred twenty (120) days from the date prescribed for its opening.

Name of Bidder: Ecolane USA, Inc.

Address: 940 West Valley Road, Suite 1400, Wayne, PA 19087

Telephone: 610-312-0033 Ext 120

Authorized Signature: 

Printed Name and Title: Daniel Andriik, Vice President of Business Development

Date: May 4, 2016

B. Level of Performance Guarantee Measurement Process

Ecolane and [REDACTED] will agree on a set measurement process upon the signing of this contract.

1. Ecolane and [REDACTED] will agree on scheduling parameters as part of the Ecolane DRT system implementation process.
2. Ecolane and [REDACTED] agree that the average level of performance for the benchmark is based on [REDACTED] NTD profile from 2013 that states that [REDACTED] demand response Rides per Hour (RPH) were reported as 1.96. This becomes the benchmark for this performance clause.
3. If after the first 90 calendar days that [REDACTED] has been live, they do not meet or exceed 2.25 Rides per Hour (RPH), Ecolane will refund 50% of the cost of the licenses (\$8942.50) back to [REDACTED].
4. Ecolane has the right to audit/review the scheduling parameters if [REDACTED] Rides per Hour (RPH) are not at an appropriate level in the opinion of Ecolane. If the scheduling parameters are not set in a manner agreeable to both Ecolane and [REDACTED] at any time to the detriment of scheduling efficiency, Ecolane has the right to deny the payment of 50% of the license costs (\$8942.50) to [REDACTED]. In the event an audit is required it will be reviewed by Ecolane and [REDACTED].

C. Term of License; Term of Support

The term of the Software License shall be from the License Date through [REDACTED] full years of use.

The terms of the Support Services shall be from the License Date through [REDACTED] full years of use.

D. Delivery & Access Terms:

Delivery of the System. Licensor commits to delivery of the Licensor Software in the timeframe set forth in Section 3 and it shall be deemed fully delivered when the Licensor Software conforms to the Documentation in all material respects; provided, if there are issues preventing Licensor Software from conforming to the Documentation in all material respects, Licensor will seek to remedy the issues as soon as commercially practicable, and provided, further, if Licensee uses the Licensor Software for 14 days in a live environment, then any such issues shall be deemed waived.

System Access. Standard hours of Licensee operations are from [REDACTED] AM to [REDACTED] PM, [REDACTED] day through [REDACTED] day, Central time zone. The Licensor Software is expected to be available for use from one hour before to one hour after the standard hours; provided Mobile Modules are expressly excluded from the Licensor Software downtime counting, meaning that any downtime experienced by a Mobile Modules is not counted as system downtime. The downtime means a "Critical" level problem as defined in the Support Services.

E. Addresses for Notices:

For Ecolane ("Licensor"):

Ecolane USA Inc.
940 West Valley Road,
Suite 1400
Wayne, PA 19087

Licensor has right to change the address for notifications by notifying Licensee by the means set up in Section 12 of this contract.

For [REDACTED] ("Licensee"):

Attention:
[REDACTED]

[Remainder of page intentionally left blank]

EXHIBIT B

SUPPORT SERVICES/SERVICE LEVEL AGREEMENT

This Exhibit B is made part of and incorporated in that certain Software License & Services Agreement (“**Agreement**”), dated [REDACTED], by and between Ecolane USA Inc., a Delaware corporation (“**Licensor**” or “**Ecolane**”), and [REDACTED] (“**Licensee**” or “**Customer**”).

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 Licensor Software does 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 between 8 AM and 5 PM EST.

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

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

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

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 Licensor Software or Mobile Modules also is not covered in Support Services.