

ECOLAB3D PROGRAM GENERAL TERMS AND CONDITIONS

These Ecolab3D Program General Terms and Conditions (the “Program T&Cs”), including Ecolab’s Data Processing General Terms and Conditions incorporated herein by reference and available at <https://www.ecolab.com/ecolab3dtandc> (the “DPA,” and together with the Program T&Cs, these “Terms”) govern the use of all Ecolab3D Program(s) service offerings, including the Software, Documentation, and the websites, mobile applications, or other interactive properties and related equipment through which the Ecolab3D Program is delivered (collectively and individually, the “Program”) that are made available by Ecolab Inc. or one or more of its affiliates (“Ecolab,” “us,” “we,” or “our”). These Terms are a legal contract between you and the entity(ies) you represent or have agency to act on behalf of (“Customer”), on one hand, and Ecolab, on the other hand (each a “Party” and collectively, the “Parties”). “You” or “Your” means collectively you (the individual) and Customer that purchase, access or use the Program. There may be individual offerings within the Program (each an “Offering”) that warrant terms and conditions specific to that Offering that may be different or in addition to these Terms (such different or additional terms specific to an Offering referred to as the “Offering Terms”). Ecolab will provide the applicable Offering Terms to you for review and acceptance at the time an Offering is made available to you. If you are using different Offerings concurrently you will be subject to these Terms and each of the applicable Offering Terms concurrently but the Offering Terms applicable to a given Offering will only apply to you with respect to that specific Offering and not any other Offering.

BY CLICKING “I AGREE” AT THE BOTTOM OF THESE TERMS, OR AFTER BEING AFFORDED THE OPPORTUNITY TO REVIEW THESE TERMS VIA ELECTRONIC ACCESS OR OTHERWISE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND ACCEPT THESE TERMS, AND YOU REPRESENT TO ECOLAB THAT (I) YOU ARE AUTHORIZED TO ENTER INTO THESE TERMS ON YOUR OWN BEHALF AND ON BEHALF OF CUSTOMER, (II) YOU ARE, AT ALL TIMES DURING YOUR ACCESS TO AND USE OF THE PROGRAM, AN AUTHORIZED USER OF CUSTOMER, AND (III) YOU AND THE CUSTOMER AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE WITH ANY OF THESE TERMS, OR IF YOU ARE NOT AUTHORIZED BY CUSTOMER TO ACCEPT THESE TERMS FOR CUSTOMER, THEN DO NOT ACCESS OR USE THE PROGRAM.

Any other terms and conditions contained in any purchase order, acknowledgement, request for proposal or other documents or communications by You that are different from or in addition to the terms set forth in these Terms are hereby expressly rejected and shall not be binding on Ecolab.

Subject to Section 16(e) of these Program T&Cs, Ecolab may update these Terms from time to time. Ecolab may make modifications to any Program in its discretion, provided that such modifications do not materially adversely affect the functionality of the Program.

1. Select Definitions. Capitalized terms shall have the definition set forth herein.
 - a. “Affiliate” means an entity that owns or controls, is owned or controlled by, or is or under common control or ownership with a Party, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.
 - b. “Applicable Law” means any and all laws, ordinances, rules, directives, administrative circulars, supervisory guidance, and regulations of any kind of any governmental authority within the jurisdictions applicable to a Party, including, but not be limited to, applicable Export Laws.
 - c. “Authorized User” means an individual authorized to use the Program pursuant to these Program T&Cs, as an officer, director, employee, contingent worker, independent contractor, agent or other person designated by Customer, provided that any corresponding fees for each such Authorized User’s access and use of the Program are paid to Ecolab pursuant to these Program T&Cs.
 - d. “Customer Data” means any and all data, information and/or materials provided or made available by or on behalf of Customer to Ecolab for use in connection with the Program.

- e. “Derived Data” means (i) Customer Data that has been processed, anonymized, aggregated and/or manipulated by or on behalf of Ecolab to such a degree that it cannot be identified by visual inspection as originating directly from Customer Data; and (ii) any general information or insight that is derived by or on behalf of Ecolab in connection with the Program.
- f. “Documentation” means all formal documentation and materials published or provided in writing by Ecolab related to the Software, including user manuals, help files and any other instructions, specifications, documents, and materials describing the functionality, installation, testing, operation, use, maintenance, support, technical features, or requirements of the Software.
- g. “Intellectual Property Rights” means any and all intellectual property rights under statutory law or common law throughout the world, including, without limitation, all: (i) patent rights (including patent applications and disclosures); (ii) registered and unregistered copyrights (including rights in software, including in source code and object code); (iii) registered and unregistered trademark and tradename rights; and (iv) trade secret rights.
- h. “Intended Purposes” means the purposes of the Software expressly set forth in any Documentation.
- i. “Licensed Locations” means the licensed Customer facility locations as identified in an agreement.
- j. “Software” means the software program(s) owned by or licensed to Ecolab, and any Ecolab updates, upgrades, enhancements, releases, improvements, and any other adaptations or modifications made to such software programs that are delivered by Ecolab to Customer.

2. Program License and Account Creation.

- a. Program License. During the Term (as defined herein), Ecolab grants Customer a non-exclusive, limited, nontransferable, non-assignable, non-sublicensable, revocable license to access and use the Program and accompanying Documentation solely for Customer’s internal business purposes in accordance with the Intended Purposes at the Licensed Locations (the “License”).
- b. Visitors and Account Creation. You may be able to visit certain public sections of the Program, including public sections of a website associated with a Program, without identifying yourself or providing personal information. In order to access some or all features of a Program, you are required to register with the Program as an Authorized User and select a username and password and create an account (“Account”). By creating and registering for an Account, you represent and warrant that all information you submit is truthful and accurate. In addition to providing information on yourself as directed by the Customer, you may request to establish additional Authorized Users of the Program on behalf of the Customer, provided the Customer has authorized the same, by providing information on those Authorized Users directly to Ecolab, or you may direct each Authorized User to the Program to create their own Account. If you provide information on Authorized Users directly to Ecolab, You hereby represent to Ecolab that You have all necessary rights, authorizations, and consents with respect to the information you submit about Authorized Users and the Customer (“Authorized User Data”), and Customer is responsible for the actions of all such Authorized Users on the Program. All Account information and any Authorized User Data provided to Ecolab must be true, accurate, current, and complete at all times. Authorized Users are responsible for updating Authorized User Data as necessary and in a timely manner to ensure its accuracy and completeness. By providing your Account information and Authorized User Data to Ecolab, You hereby authorize Ecolab and its Affiliates, contractors, and suppliers to use, copy, sublicense and disclose all Account information and Authorized User Data (i) as part of providing the Program as described in these Terms, (ii) to the extent required pursuant to applicable federal, state or local law or a valid order issued by a court or governmental agency of competent jurisdiction (a “Legal Order”), (iii) as necessary to enforce these Terms and/or to protect any of Ecolab’s or other parties’ legal rights, (iv) in an aggregated form that does not include identifying information, and (v) as permitted by the DPA or an associated Program Privacy Notice (if applicable).

- c. Authorized User Accounts. You may not have more than one (1) Account without Ecolab's prior written permission. You must access the Program and non-public portions of the Program only through your Account. You may not transfer Your Account to anyone without the express prior written consent of Ecolab. Customer will ensure the security of all passwords and usernames used by Customer personnel and Authorized Users to use the Program. Customer is responsible for access control maintenance (including access termination) in connection with its and Authorized Users' use of the Program. Customer will notify Ecolab promptly if Customer becomes aware of, or suspects, any breach of security or unauthorized access to or use of the Program or of any account used to access the Program or any unauthorized access to passwords or usernames. You agree to bear all responsibility and liability for all actions under or through Your Account as well as all fees and/or charges incurred from the use of Your Account, whether authorized or unauthorized.
- d. Authorized User Content. You may generate, provide or otherwise make available on or through the Program content and materials, including, but not limited to, content that may be considered Customer Data ("User Content"). User Content is the sole responsibility of the Authorized User that submitted that User Content. Ecolab does not control User Content generated or provided by Authorized Users and is not responsible or liable in any way for any User Content that is made available through the Program. Ecolab does not endorse any User Content, and does not warrant or guarantee the integrity, truthfulness, accuracy, or quality of any User Content. You and Customer agree that Ecolab is not liable for any loss or damage of any kind resulting from availability, access, and/or use of any User Content. You further agree that the User Content that you may generate or provide through the Program shall be truthful and not misleading. You and Customer hereby grant to Ecolab a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up, worldwide license (including the right to sublicense through multiple tiers) to use, reproduce, process, adapt, publicly perform, publicly display, modify, prepare derivative works, publish, transmit and distribute Your User Content, or any portion thereof, in any form, medium or distribution method now known or hereafter existing, known or developed, and authorize others to use the User Content. You hereby represent that you have obtained any necessary rights, authorizations, and consents from Customer and any applicable third-parties with respect to your submitted User Content, including, without limitation, to grant the rights in this Section 2(d) to Ecolab. You and Customer agree not to submit User Content that: (i) may or does create a risk of harm, injury, death, disability, or any other loss or damage to any person or property; (ii) contains any information or content that you do not have a right to make available under any law or under contractual or fiduciary relationships; or (iii) contains any information or content that you know is not correct and current. You and Customer agree that any User Content that you upload does not and will not violate third-party rights of any kind, including without limitation any Intellectual Property Rights or rights of privacy. Ecolab reserves the right, but is not obligated, to reject and/or remove any User Content that Ecolab believes, in its sole discretion, violates these provisions. If you believe your work is the subject of intellectual property infringement and appears in the Program or in User Content, please see our Trademark and Copyright Infringement Policy available <https://www.ecolab.com/dmca>, which is incorporated herein by reference.

3. Customer Systems, Authorized User Credentials, Customer Data and Export Law Compliance.

- a. Customer Systems. Customer shall have sole responsibility for procuring the hardware and internet connectivity in order to access the Program as well as for complying with Ecolab's technical requirements to upload Customer Data. Ecolab shall not be responsible or liable in any manner for any equipment provided by Customer or any third party, and Customer shall be the sole responsible Party to support and maintain its own equipment. The Ecolab Program may not be compatible with Customer or third-party equipment. Customer acknowledges and agrees that Ecolab is not required to modify the Ecolab Program or delivery of the Program to make a Program compatible with Customer's equipment or third-party equipment. Customer shall at all times during the Term: (a) set up, maintain and operate in good repair all information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services ("Customer Systems") on or through which the Program is accessed or used; (b) provide

all cooperation and assistance as Ecolab may reasonably request to enable Ecolab to exercise its rights and perform its obligations under these Terms; and (c) ensure use of the Program is only for Customer's own environment and in accordance with Applicable Laws, the Documentation, and other applicable requirements, including Customer's obligations in the DPA. Customer shall employ all physical, administrative, and technical controls, security procedures, and other safeguards necessary to, in accordance with these Terms: (a) securely administer the distribution and use of the Program and protect against any unauthorized access to or use of the Program; and (b) control the content and use of Customer Data, including the uploading or other provision of appropriate Customer Data for processing by the Program. Ecolab is not responsible for the security of the Customer's network, hardware and IT systems, including without limitation, any possible, suspected or actual breach of Customer's physical or IT security defenses and resultant disclosure of any data of Customer or its personnel. Customer is solely responsible for any security procedures reasonably required to protect access to its hardware, systems and Customer Data in connection with its use of the Program. Ecolab has the right at any time to terminate or suspend access to any Authorized User or to Customer if Ecolab believes in good faith that such termination or suspension is necessary to preserve the security, integrity, or accessibility of Program or Ecolab's network. Customer agrees to indemnify and hold Ecolab and its Affiliates harmless from any Claim related to the foregoing.

- b. Customer Data and Privacy. Customer is solely responsible for ensuring that Customer Data does not infringe on any intellectual property right, violate any Applicable Laws or the terms of any agreement, including, without limitation, any associated privacy terms.
- c. Export Law Compliance. Each Party shall (a) comply with Applicable Law administered by the U.S. Commerce Department Bureau of Industry and Security, U.S. Treasury Office of Foreign Assets Control, or other governmental entity imposing export controls and trade sanctions ("Export Laws"), including designating countries, entities and persons ("Sanctions Targets") and (b) not directly or indirectly export, re-export or otherwise deliver the Program to a Sanctions Target, or broker, finance or otherwise facilitate any transaction in violation of any Export Laws. Customer represents that it is not a Sanctions Target or prohibited from utilizing the Program and/or purchasing or licensing the associated Software and Documentation under Applicable Law, including Export Laws, and further represents that entering into these Terms will not violate any Export Laws.

4. Title/Ownership, Confidentiality, Intellectual Property, Third-Party Technology and Customer Data License.

- a. Title/Ownership. Customer acknowledges that, except for the License, it has not and will not acquire any rights, title or interest in or to any of the Program. The Program, all associated Software and Documentation; Ecolab's data, information, and Content (as defined below), all Intellectual Property Rights therein and thereto, and all Intellectual Property Rights related to technology that is used in the provisioning of the Program are, and shall at all times remain, the exclusive and sole property of Ecolab, its related third parties, affiliates, agents and its licensors, as applicable. All rights not expressly granted herein are reserved and retained by Ecolab and its third parties, affiliates, agents and its licensors, and no Intellectual Property Rights or any other form or type of rights or licenses are granted at any time to Customer, or are assigned, granted, or transferred to Customer, its employees, Affiliates, Authorized Users, agents and independent contractors or any other party by estoppel, implication, or otherwise.
- b. Confidentiality and Ecolab's Intellectual Property. Customer acknowledges that Ecolab's Program, Software and Documentation, business plans, trade secrets, discoveries, ideas, designs, drawings, specifications, techniques, models, data, code, programs, processes, lists, know-how, marketing plans, customer information, and financial and technical information and other information that is known to be or should be known to be confidential information or designated by Ecolab as confidential information (collectively, the "Confidential Information") are Confidential Information of Ecolab, and Customer will not disclose such Confidential Information or any of Customer's use thereof to any third party, or use such Confidential Information for any purpose not authorized herein. Except for certain Customer Data as described herein, all material included in the Program, including (without limitation) the text, software, scripts, graphics, photos, sounds, music, videos,

interactive features and the like (“Content”) are owned by or licensed to Ecolab, subject to copyright and other intellectual property rights under United States and foreign laws and international conventions. Content in the Program may not be used, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever without our prior written consent. You and Customer shall not challenge or assist any third party to dispute or challenge Ecolab’s or its licensors’ ownership of such rights or the validity or enforceability of such rights.

- c. Third Party Technology. The software provided by Ecolab to Customer may include software, content, data or other materials, including related documentation, that are owned by persons other than Ecolab that are provided to Customer on terms that are in addition to and/or different from those contained in these Terms (the “Third-Party Technology”). Usage of such software, content, data or materials is deemed to constitute acceptance of any and all additional terms applicable to Third-Party Technology. Any breach by Customer of any Third-Party Technology license is also a breach of these Terms.
- d. Customer Data License. Customer owns and retains all right, title and interest in and to Customer Data. Subject to the terms and conditions of these Terms, Customer grants to Ecolab, and its Affiliates, a perpetual, nonexclusive, worldwide, royalty-free, transferable, sublicensable license to use, copy, store, process, manipulate, modify, change, configure, perform, display and transmit Customer Data as necessary to provide the Program to Customer. Customer grants to Ecolab an irrevocable, nonexclusive, worldwide, royalty-free, transferable, sublicensable, perpetual right to aggregate Customer Data with other data from others and to use in any way de-identified Customer Data and aggregated Customer Data including, without limitation, for the purpose of improving the Program and to create Derived Data. Customer represents and warrants that Customer owns and/or has all necessary rights in the Customer Data to grant Ecolab the rights granted in these Terms.

5. Use of Customer Data and Administration of the Program.

- a. Service Analysis. Without limiting any Customer Data ownership rights, Ecolab shall have the right to: (i) compile statistical and other information related to the performance, operation and use of the Program and Customer Data, and (ii) use data from the Program and Customer Data in aggregated form for security and operations management, to create statistical analyses, for research and development purposes and to incorporate Customer Data into aggregated and anonymized data sets for the purpose of improving and commercializing products, software, technology and services of Ecolab (clauses (i) and (ii) are collectively referred to as “Service Analysis”). Ecolab owns and retains all rights, title and interest to such Service Analysis and will take reasonable steps not to incorporate Customer Data in a form that could serve to identify Customer. In addition, Customer agrees that Ecolab owns and retains all right, title and interest in and to Derived Data.
- b. Monitoring the Program. Ecolab may use tools, scripts, software, and utilities (collectively, the “Tools”) to monitor and administer the Program and to help resolve Customer’s service requests. Information collected by the Tools may also be used to assist in managing Ecolab product and service portfolio, to help Ecolab address deficiencies in its product and service offerings, and for license and Program management.
- c. Third-Party Service Providers. Ecolab works with other companies that help Ecolab provide products and services, including modifications and updates thereto, to Customer, such as third-party manufacturers, third-party software providers, cloud-hosting service providers, freight carriers, and credit card processing companies, and Ecolab may share certain information with these companies for this purpose including information regarding Customer’s use of the Program.

6. Customer Support.
 - a. Internet. Customer acknowledges that Ecolab is not responsible for delays, delivery failures or other damages resulting from Customer or Customer's Authorized Users' access to the internet, and such access is the responsibility of the Customer or each Authorized User.
 - b. System Updates. Ecolab reserves the right, in its sole discretion, to make any enhancements or modifications to the Program that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of the Program; (ii) the competitive strength of or market for the Program; or (iii) the Program's cost efficiency or performance; or (b) to comply with Applicable Law. If there are any functional updates or enhancements that in Ecolab's sole discretion are considered new products relating to the Program, Ecolab will notify Customer of such new products and the cost in the event Customer elects to incorporate such new products as part of the Program. Ecolab has the right to bill, and Customer shall pay, for all reasonable upgrade charges. Notwithstanding the foregoing, Ecolab is not obligated to update, upgrade, enhance or improve the Program.
 - c. Scheduled Maintenance. Scheduled system maintenance will take place during a normal maintenance window. During such time, the Program will be unavailable. Emergency maintenance may be required at other times in the event of an incident or circumstance requiring immediate attention outside of normally scheduled system maintenance.
 - d. Program Performance and Availability. Ecolab makes no representations, warranties or claims to You or Customer regarding the reliability or availability of the Program. Additionally, Ecolab is not liable for any delay or failure to provide the Program from time to time, and unscheduled downtime may occur that is caused by, but in no way limited to, circumstances beyond Ecolab's reasonable control and/or the following events: (a) Customer or any Authorized User's breach of any provision of these Terms; (b) incompatibility of Customer's or Authorized User's equipment or software with the Program; (c) poor or inadequate performance of Customer's or Authorized User's network, hardware, or other systems, including internet connectivity; (d) Customer's or Authorized User's equipment failures; (e) force majeure (including as may be defined in these Program T&Cs); (f) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Ecolab pursuant to these Program T&Cs; or (g) disabling, suspension or termination of the Program (such downtime resulting from the events named in (a) through (g) hereof, the "Unscheduled Downtime"). In the event of Unscheduled Downtime, Ecolab's sole obligation will be to use commercially reasonable efforts to resolve the issue and to resume providing access to the Program. Ecolab may provide notice of any Unscheduled Downtime to Customer and provide updates regarding resumption of access to the Program following any Unscheduled Downtime to the extent known to Ecolab.
7. Prohibited Uses. In addition to uses otherwise prohibited by Ecolab, these Terms or Applicable Law, You shall not, and shall not allow any third party to, do any of the following:
 - a. Use the Program for any purpose other than the Intended Purposes or in any way beyond the scope of the license set forth in these Program T&Cs, including, without limitation, using the Program in the operation of a service bureau, for timesharing, or otherwise for the benefit of third parties.
 - b. Copy or distribute the Program or any Software or Documentation without Ecolab's prior written approval, or change or delete any copyright or proprietary notices from the Program or Content.
 - c. Circumvent, disable or otherwise interfere with security-related features of the Program or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Program or the Content therein.
 - d. Download, access, use or register for the Program if you are under eighteen (18) years old.

- e. Access or use the Program by artificial means or in a manner that, in Ecolab's sole discretion, would inflict an excessive load on Ecolab's or its suppliers' hardware or software.
 - f. Disclose information or analysis regarding the quality or performance of the Program.
 - g. Upload or transmit: (i) any User Content or data that infringe or violate any rights of any party, including, but not limited to, any patent, copyright, trademark, trade secret or any proprietary or other right of Ecolab or a third party, (ii) any User Content or data that are, or Ecolab deems to be, unlawful, illegal, threatening, obscene, defamatory, libelous, profane, harmful, abusive, racially or ethnically offensive, harassing, humiliating, invasive of privacy or publicity rights, otherwise objectionable, or otherwise violate the rights of Ecolab or a third party, or (iii) any disabling code (defined as computer code designed to interfere with the normal operation of the Program or Ecolab's or a third party's hardware or software) or any program routine, device or other undisclosed feature, including, but not limited to, a time bomb, virus, software lock, drop-dead device, malicious logic, worm, Trojan horse or trap door which is designed to delete, disable, deactivate, interfere with or otherwise harm the Program or Ecolab's or a third party's hardware or software.
 - h. Use the Program for benchmarking, monitoring or testing availability or performance, or any other competitive use, including, but not limited to, creating programs, products, services, technology or software that are substantially similar to the Program.
 - i. Modify, adapt, alter, disassemble, decompile, decode, translate or convert into human readable form, or reverse engineer, all or any part of the Program or any Software, or attempt to reconstruct or derive any source code (or underlying ideas, algorithms, structure or organization), modify or create a derivative work of the Program by any means whatsoever.
 - j. Use or access any data, content or materials for any purpose or in any manner other than real-time viewing (which prohibits, for example, screenshots, downloading and storing) unless expressly permitted by the features of the Program.
 - k. Engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Program, or which, as determined by Ecolab, may harm Ecolab or Program users or expose them to liability.
- 8.** Term. These Terms shall commence on the date you first access or use the Program and remain in place for so long as you have access to the Program. Your use of an Offering pursuant to the applicable Offering Terms may specify a different duration of use with respect to your use of that Offering.
- 9.** Termination. These Terms may be terminated: (i) by Ecolab with seven (7) days' prior written notice to Customer for any reason or no reason; (ii) by Ecolab immediately in the event of a breach by you or Customer of the confidentiality or license provisions of these Terms; or (iii) by Ecolab in the event of a breach of these Terms by you or Customer which remains uncured thirty (30) days after written notice to the Customer. Upon the effective date of termination of these Terms, Ecolab will immediately cease providing the Program and all usage rights granted to Customer under these Terms, including but not limited to the License, will automatically terminate without any further action by Ecolab; provided, however, that termination of these Terms will terminate all Offering Terms with respect to all Offerings, but termination of a specific Offering in accordance with the corresponding Offering Terms only terminates your use of that Offering and not any other Offering or these Terms. If these Terms are terminated, Ecolab shall provide Customer a reasonable opportunity to remove Customer Data at Customer's sole cost; provided, that if Customer fails to remove such Customer Data within a reasonable time, not to exceed sixty (60) days following such termination, then Ecolab may retain or destroy such Customer Data without liability with respect thereto. Termination shall not relieve Customer of its obligations under these Terms with respect to the payment of all fees and other expenses that have accrued up to and including the termination date or that Customer has agreed to pay. Any confidentiality obligations in these Terms, and any other right or obligation of the Parties hereunder that, by

its nature, should survive termination or expiration of these Terms, will survive, including without limitation: Sections 3; 4; 5; 7; 9; 11; 12; 13; 14; 15; and 16.

10. Fees and Taxes. Ecolab shall charge a fee for each Offering as set forth in the specific Offering Terms quote, work order, documentation or other written communication from Ecolab, or on Ecolab's website or the Program platform, and Your subscription for the relevant Offering will automatically renew on each yearly anniversary of the effective date for which Ecolab first charges the fee. Some Offerings may be made available by Ecolab on a trial basis, in which case the terms of such trial will be detailed in the Offering Terms for those Offerings. Except as otherwise agreed between the Parties, all payments are due within thirty (30) days following the invoice date. Without prejudice to its other rights and remedies, if Ecolab does not receive any payment within 30 days from the date it is due, Ecolab may terminate the Program and/or assess a late payment charge on the unpaid amount at the rate of 1.5% per month or the highest rate allowed under Applicable Law, whichever is higher. Customer shall reimburse Ecolab for all reasonable costs related to any proceedings to collect any past-due amounts, including without limitation attorneys' fees and any collection agency cost. Ecolab reserves the right, at any time, to change any fees or charge fees for using the Program (or to begin charging fees for any free aspects of an Offering), provided that such changes will not apply to fees or charges paid prior to the time of the change. We may charge Customer sales tax as applicable to an Offering. Customer will be responsible for all other taxes, levies, duties or similar charges.
11. Rental and Purchase of Products. You, on behalf of yourself and the Customer, agree to the following terms and conditions for rental or use of Ecolab-owned products or other equipment, parts and/or items ("Equipment") in connection with the Program: (a) Equipment shall remain the sole property of Ecolab; (b) Customer shall not use the Equipment with any materials or products other than those recommended or approved by Ecolab; (c) Customer shall not alter the Equipment or permit any third-party to alter or repair the Equipment without Ecolab's prior written authorization; (d) Customer assumes all risk of loss or liability arising from or pertaining to its possession, operation or use of the Equipment, and shall indemnify, defend and hold Ecolab and its Affiliates harmless from all Claims (as defined herein) arising from Customer's possession and use of the Equipment except to the extent damage to the Equipment is caused by Ecolab's or its Affiliates' negligence or willful misconduct. Upon termination of these Terms by either Ecolab or Customer, Customer shall, unless otherwise agreed, return Equipment to Ecolab at Customer's sole expense in the same condition as received, ordinary wear and tear excepted. You, on behalf of yourself and the Customer, agree to promptly notify Ecolab in writing of any damage, loss or destruction of Equipment. In the event Equipment is lost, damaged or destroyed, Customer shall pay to Ecolab the cost of replacement, or of repair at Ecolab's standard charges then in effect.
12. Disclaimer of Warranties. THE PROGRAM IS PROVIDED TO YOU AND CUSTOMER "AS IS," "WHERE IS" AND "WITH ALL FAULTS AND DEFECTS" WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ECOLAB DISCLAIMS ALL WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. ECOLAB PROVIDES NO WARRANTY AND MAKES NO REPRESENTATIONS OF ANY KIND THAT THE PROGRAM WILL MEET THE CUSTOMER'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR 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.
13. **Limitation of Liability.**
 - a. **YOU AND CUSTOMER USE THE PROGRAM AT YOUR AND ITS OWN RISK. EXCEPT AND ONLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW, CUSTOMER WILL BE SOLELY RESPONSIBLE FOR (AND ECOLAB DISCLAIMS) ANY AND ALL LOSS, LIABILITY AND DAMAGES RESULTING FROM YOUR OR CUSTOMER'S USE OF THE PROGRAM INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY AND**

PROPERTY DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGE OR LOSS TO CUSTOMER'S COMPUTER SYSTEMS, SOFTWARE, WATER TREATMENT SYSTEMS, HEATING AND COOLING SYSTEMS AND OTHER ASSETS, PROPERTY OR ITEMS AT THE LOCATION).

- b. **UNLESS PROHIBITED OR RESTRICTED BY LAW, ECOLAB'S, ITS AFFILIATES', AND ITS AND THEIR RESPECTIVE LICENSORS' CUMULATIVE AGGREGATE LIABILITY FOR CLAIMS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS SHALL NOT EXCEED THE AGGREGATE FEES PAID BY CUSTOMER TO ECOLAB DURING THE TRAILING SIX-MONTH PERIOD PRIOR TO THE DATE ANY SUCH CLAIM AROSE.**

- c. **UNLESS PROHIBITED OR MODIFIED BY LAW AND EXCEPT FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT, AND FRAUD, NEITHER ECOLAB, NOR ITS AFFILIATES NOR ANY OF ITS OR THEIR RESPECTIVE LICENSORS WILL BE LIABLE TO YOU OR TO CUSTOMER FOR ANY INDIRECT, ECONOMIC, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, WHETHER DIRECT OR INDIRECT, OR ANY LOST PROFITS, LOSS OF BUSINESS REVENUES OR EARNINGS, LOSS OF USE, LOSS OR CORRUPTION OF DATA, LOSS OF SAVINGS, LOSSES BY REASON OF COST OF CAPITAL, A FAILURE TO REALIZE EXPECTED SAVINGS, OR DELAYS, LOSS OR INTERRUPTION OF SERVICE, SYSTEMS OR SYSTEMS SERVICE FAILURES, MALFUNCTION OR SHUTDOWN, OR FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE PROGRAM OR THE FAILURE TO TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION OR ANY BREACHES IN SYSTEM SECURITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, OR IN CONNECTION WITH, THE PROGRAM OR ACTIONS UNDER THESE TERMS, WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR LIKELIHOOD HAS BEEN DISCLOSED TO ECOLAB, AND REGARDLESS OF WHETHER A CLAIM IS BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), VIOLATION OF ANY APPLICABLE UNFAIR OR DECEPTIVE TRADE PRACTICES ACT, OR ANY OTHER LEGAL OR EQUITABLE PRINCIPLE.**

14. Indemnity.

- a. Customer shall defend, indemnify and hold harmless Ecolab and its Affiliates, and its and their respective officers, directors, employees and representatives, from and against all claims, judgments, damages, liabilities, actions, demands, costs, expenses, and losses, including, without limitation, reasonable attorneys' fees and costs related thereto ("Claims"), resulting from, arising out of, or in connection with or related to: (i) Customer's, its Authorized Users' or its Affiliates, and your, use or misuse of the Program or materials or information related thereto; or (ii) violation of any Applicable Law by Customer, its Affiliates, Authorized Users, you, or any other third party on behalf of Customer. Customer's obligations under this Section 14 will not apply to the extent any Claims are the result of Ecolab's gross negligence or willful misconduct. Ecolab will promptly notify Customer in writing of the respective Claim, and will permit the Customer to investigate, settle, defend and solely control such defense or settlement, provided that such settlement does not impose obligations upon Ecolab. Ecolab will reasonably cooperate, at Customer's cost, in the investigation and defense of such matters. Ecolab will have the right, but not the obligation, to be represented by counsel of its own selection and at its own sole expense.

- b. If a credible claim is made by a third party that the Program or any portion thereof infringes a U.S. patent, copyright, trademark or misappropriates a trade secret, upon receipt of Customer's prompt written notice of such Claim, Ecolab will have the option, in its sole discretion, to (i) replace such Program with software that is non-infringing; (ii) modify such Program to make it non-infringing;

or (iii) remove such Program and refund to Customer all applicable fees paid to Ecolab after deduction of an appropriate charge based on use by Customer prior to such removal of such Program. The foregoing is your and Customer's sole remedy, and Ecolab's sole responsibility, for any Claim of third-party infringement based on the Program. The foregoing shall not apply in the event any Claim arises out of (a) any Program that has been altered or modified by any party other than Ecolab or (b) the use of any Program in combination with other product, equipment or materials not furnished directly by Ecolab. Notwithstanding anything to the contrary herein, Ecolab will have no liability for any Claim based on or relating to: (i) Customer Data as provided or made available by Customer; (ii) any modification of the Program not authorized in writing by Ecolab; or (iii) the use of the Program other than in accordance with these Terms.

15. Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under these Terms, in each case whether voluntarily, involuntarily, by operation of law, merger, change of control, consolidation, reorganization or otherwise, without Ecolab's prior written consent, which consent Ecolab may give or withhold in its sole discretion. No delegation or other transfer will relieve Customer of any of its obligations or performance under these Terms. Ecolab may assign all or part of these Terms without Customer's consent.
16. General.
- a. You agree that any representations and warranties made by you together with any covenants or obligations you have assumed in these Terms shall be made jointly and severally with Customer.
 - b. Neither you nor Customer, on the one hand, or Ecolab, on the other hand, will incur any liability to the other Party on account of any loss or damage resulting from any delay or failure to perform any or all parts of these Terms if such delay or failure is caused, in whole or in part, by events, occurrences or causes beyond the reasonable control and without the gross negligence of the applicable Party (each such event, "Force Majeure"). Such events and occurrences would include, without limitation, acts of God, strikes, lock outs, riots, acts of war, earthquakes, fires, pandemics, and explosions. For the avoidance of doubt, Customer's inability to pay the applicable fees to Ecolab for any reason shall not constitute an event of Force Majeure.
 - c. These Terms shall be governed by and construed in accordance with (i) if Ecolab or its Affiliate that are invoicing Customer for any Program are located in the United States, the laws of the State of Minnesota without regard to any conflicts of laws rules, provisions or statutes (ii) if Ecolab's Affiliate, that is invoicing Customer for any Program, is located outside the United State, the laws of the jurisdiction in which the local Ecolab affiliate is located. In the event a dispute arising under these Terms results in litigation, the non-prevailing Party shall pay the court costs and reasonable attorneys' fees of the prevailing Party. The Parties agree that the exclusive jurisdiction for resolution of any disputes arising out of or in connection with these Terms shall be (x) competent courts in the State of Minnesota where Ecolab or any Affiliate invoicing Customer is located in the United States and (ii) where any Ecolab Affiliate invoicing Customer is located outside the United States, any competent courts in the jurisdiction in which the Ecolab Affiliate is located. The Parties agree that the U.N. Convention on Contracts for the International Sale of Goods will not apply to these Terms.
 - d. Notice to Ecolab: Any notice or other communication required or permitted hereunder shall be given in writing to Ecolab at 1 Ecolab Place, St. Paul, Minnesota, 55102 USA, Attn: General Counsel, or DigitalAgreements@ecolab.com, or at such other addresses as shall be given by Ecolab to Customer in writing. Such notice shall be deemed to have been given when (a) delivered personally, (b) sent via certified mail (return receipt requested) (c) sent via cable, telegram, telex, or email (all with confirmation of receipt), or (d) by recognized air courier service. Notice to Customer: Ecolab may provide any notice to Customer using electronic means, whether through the Program or email. Notices sent by email shall be deemed to have been given when Ecolab sends the email and notices sent via the Program shall be deemed given when posted. If Ecolab sends notice by email, it shall use the email address affiliated with your Account.

- e. The Parties agree that these Terms may be modified at any time by Ecolab by posting a revised version on the Ecolab web page (and appropriately linked on the Program login or other pages upon which these Terms previously appeared), or by otherwise notifying you in accordance with Section 16(d) above. The modified terms will become effective, unless otherwise agreed in these Terms, upon posting, or, if Ecolab notifies Customer via another method, as stated in such message. By continuing to use the Program after the effective date of any amendments or modifications to these Terms, Customer agrees to be bound by the modified terms.