

ECOFIT MASTER AGREEMENT GENERAL TERMS AND CONDITIONS

Last Updated: October 31, 2019

These General Terms and Conditions (“**General Terms**”) are part of, subject to and governed by the terms and conditions of the EcoFit Master Agreement between Customer and EcoFit that references these General Terms. Capitalized terms used but not defined in these General Terms have the meanings set forth elsewhere in the Agreement.

1. **General; Addenda; Orders.**

1.1 **General.** This Agreement sets forth the terms and conditions under which Ecofit makes available its Solution and provides related services. These General Terms do not, absent the execution of an Addendum, create any business relationship or impose any obligation on EcoFit to provide any license, access, product, or service.

1.2 **Addenda.** The Addenda contain additional terms and conditions applicable Customer’s purchase of the components comprising the Solution, which includes: (a) the Equipment comprising Hardware and Software (as defined in the Equipment Addendum); (b) the software and/or data made available by EcoFit over the internet as a service that is set out in an Order (“**Cloud Services**”, and together with the Equipment, the “**System**”); and (c) the setup, configuration, and other professional services provided by EcoFit that are described in an Order (the “**Services**”). Each Addendum referenced in the Cover Page will be deemed to be incorporated by reference into the terms and conditions of this Agreement. In this Agreement, the System includes any documentation made available by EcoFit to Customer and, unless otherwise agreed in an Addendum, any deliverables identified as such in an Addendum and all bug fixes, patches, work-arounds, updates, upgrades, enhancements, modifications, and other new versions of the System that EcoFit makes available to Customer.

1.3 Orders. EcoFit may, in its sole discretion, accept or reject any Orders. EcoFit may accept any order by confirming the Order (whether by written confirmation, invoice, or otherwise) or by delivering or provisioning the Solution, whichever occurs first. The terms of this Agreement expressly exclude any of Customer’s general terms and conditions contained in any Order or other document issued by Customer.

2. **Proprietary Rights; Prohibited Uses.** The System contains proprietary and trade secret information of EcoFit. Except for the limited rights or licenses that EcoFit grants to Customer under an Addendum, EcoFit and its licensors retain all ownership and proprietary rights in and to the Software and the Cloud Services, including any and all copies made by Customer, notwithstanding the use of the terms “purchase” or “sell”, or derivations of such terms, in this Agreement. Customer will not use the System for any purposes beyond the scope expressly set out in this Agreement, including, for greater certainty, in the applicable Addendum. Customer will have no right and will not, nor will it authorize or assist any third party to: (a) copy the Software or Cloud Services, except as expressly permitted in this Agreement; (b) disassemble, reverse engineer, modify, translate, alter or decompile all or any portion of the Software or Cloud Services or otherwise discern the source code of the Software or the Cloud Services; (c) adapt, modify, translate, or create derivative works of the Software or the Cloud Services (unless and to the extent authorized in the applicable Addendum); (d) distribute, copy, rent, lease, sublicense, assign, transmit, sell or otherwise transfer the Software or Cloud Services or any of Customer’s rights therein, except as expressly permitted in this Agreement; or (e) use the System to create, collect, transmit, store, use, or process any data that violates any applicable laws, or infringes, violates or otherwise

misappropriates the intellectual property or other rights of any third party (including any moral right, privacy right or right of publicity). Nothing in this Agreement will be construed to grant Customer any right to obtain or use source code.

3. End Users. Customer will ensure that all individuals and users to whom Customer makes the System available (“**End Users**”), are bound by enforceable agreements containing terms that are no less restrictive or protective of EcoFit’s and its licensors’ rights than those set forth in this Agreement. Customer will use all efforts to enforce such agreements similar to those efforts Customer uses to enforce its own terms and agreements for the protection of its own proprietary interests, but in no event less than reasonable efforts.

4. **Support.** Customer will generally have access to EcoFit’s technical support services (“**Support Services**”): (i) via knowledge base available at <https://myecofit.zendesk.com/hc/en-us>; (ii) via telephone at 1-855-380-0123 from 8:00 am to 5:00 pm PT, Monday through Friday (excluding statutory and civic holidays observed in the Province of British Columbia, Canada); and (iii) via email at support@myecofit.com.

5. Fees.

5.1 Fees. Customer agrees that the rights granted under this Agreement, including any license or access provided to System or Services, are conditioned on Customer’s payment of all required fees for such System or Services, whether upfront, one-time, recurring, or a combination of the foregoing, as specified in the Cover Page or in the applicable Addendum (“**Fees**”). In consideration for the rights granted to Customer and the performance of EcoFit’s obligations under this Agreement (including, for greater certainty, each Addendum), Customer will pay EcoFit the Fees.

5.2 Payment. Unless otherwise noted in an Addendum, all Fees are identified in United States dollars. All Fees have a payment term of net 30 days from the invoice date unless stated otherwise in the applicable Addendum. All Fees under this Agreement are due upon the earlier of the delivery of the applicable System or Service, or presentation of a EcoFit’s invoice, or as otherwise specified herein or in the applicable Addendum. Customer’s payment is not subject to any setoff claims or rights of offset of any kind, including inactive use, or where access to or use of the System or Services is prevented for any reason, or Customer has failed to install or use the System or to provide access for applicable Services. EcoFit reserves the right to take any and all appropriate action if Customer fails to pay as required in this Agreement, which may include: (a) prevention of use of the System by any party; (b) withholding of Services until Customer has paid in full amounts owed to EcoFit; and (c) charging a late fee of 1.5% per month (or less, as per the maximum amount allowed by applicable law) for all past due amounts. Customer agrees to pay and reimburse EcoFit for all such amounts and Fees.

5.3 Taxes. The Fees set out in this Agreement do not include applicable sales, use, gross receipts, value-added, GST or HST, personal property or other taxes (collectively “**Taxes**”). Customer will be responsible for and pay all applicable Taxes, duties, tariffs, assessments, export and import fees or similar charges (including interest and penalties imposed thereon) on the transactions contemplated in connection with this Agreement. Notwithstanding anything to the contrary in this Agreement, if any amounts (including any Taxes) are required to be withheld by Customer from any amount otherwise payable by Customer to or for the benefit of Ecofit under this Agreement, Customer will: (a) pay an additional amount such that the net amount actually received by EcoFit will, after all such withholdings (including any withholdings to be made in respect of any additional amount payable pursuant to this sentence), equal the full amount of the payment then due; (b) pay, or cause to be paid, to the relevant

taxation authority the full amount of such withholdings (including the full amount of any withholdings in respect of any additional payment required to be paid pursuant to this sentence) in accordance with applicable law; and (c) furnish EcoFit as soon as practicable (and, in any event, within 30 days) with an official receipt (or a certified copy thereof) or such other documentation as is reasonably acceptable to EcoFit evidencing payment of such withholdings to the relevant taxation authority. If Customer is a tax-exempt entity or claims exemption from any Taxes hereunder, Customer will provide a certificate of exemption upon agreement to this Agreement and, after receipt of valid evidence of exemption, EcoFit will not charge Customer any Taxes from which Customer is exempt.

6. **Customer Data.** Customer retains all ownership and intellectual property rights in and to any data, information, content, records, and files that Customer (or any of its End Users) loads, makes available for access by, transmits to or enters into the System (“**Customer Data**”). Customer grants to EcoFit a nonexclusive, worldwide, royalty-free, irrevocable, fully paid-up right to access, collect, use, process, store, disclose, and transmit Customer Data to: (i) provide the System and Services and to exercise its rights and perform its obligations under this Agreement; (ii) improve and enhance the System and its other offerings; and (iii) produce data, information or other materials that are not identified as relating to a particular individual or company (such data, information and materials, the “**Aggregated Data**”). EcoFit may use, process, store, disclose and transmit the Aggregated Data for any purpose and without restriction or obligation to Customer of any kind.

7. Representations and Warranties; Disclaimer.

7.1 **Mutual Representations and Warranties.** Each party represents, warrants, and covenants that:

7.1.1 it has full power and all necessary rights to enter into this Agreement; and

7.1.2 it will carry out its obligations under this Agreement in compliance with applicable laws.

7.2 **Customer Representations and Warranties.** Customer represents and warrants that Customer has obtained all consents required to collect, use, store, process, disclose, and delete Customer Data using the Solution or otherwise make available such data to EcoFit pursuant to the terms and conditions of this Agreement.

7.3 Disclaimer.

7.3.1 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, ECOFIT DOES NOT WARRANT THAT THE SOLUTION WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL ERRORS CAN OR WILL BE CORRECTED; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOLUTION. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE SOLUTION (AND ANY PART THEREOF) ARE PROVIDED “AS IS” AND “AS AVAILABLE”. ECOFIT MAKES NO WARRANTIES UNDER THIS AGREEMENT WITH RESPECT TO ANY THIRD PARTY SOFTWARE, HARDWARE OR OTHER PRODUCT OR SERVICE EMBEDDED IN OR INCLUDED WITH THE SOLUTION OR FURNISHED TO CUSTOMER BY ECOFIT.

7.3.2 TO THE EXTENT PERMITTED BY APPLICABLE LAW, ECOFIT HEREBY DISCLAIMS ALL EXPRESS, IMPLIED, COLLATERAL, OR STATUTORY WARRANTIES,

REPRESENTATIONS, AND CONDITIONS, WHETHER WRITTEN OR ORAL, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, COMPATIBILITY, TITLE, NON-INFRINGEMENT, SECURITY, RELIABILITY, COMPLETENESS, QUIET ENJOYMENT, ACCURACY, QUALITY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, ECOFIT EXPRESSLY DISCLAIMS ANY REPRESENTATION, CONDITION, OR WARRANTY THAT ANY DATA OR INFORMATION PROVIDED TO CUSTOMER IN CONNECTION WITH CUSTOMER'S USE OF THE SOLUTION (OR ANY PART THEREOF) IS ACCURATE, OR CAN OR SHOULD BE RELIED UPON BY CUSTOMER FOR ANY PURPOSE WHATSOEVER.

7.4 Customer's Responsibilities. Unless otherwise agreed to in an Addendum, Customer is solely responsible for: (a) purchasing and obtaining from third parties, and for maintaining during the Term, all applicable licenses and consents for third party technology needed to install, execute, and otherwise use the System (unless provided by EcoFit pursuant to this Agreement and paid for by Customer to EcoFit); (b) configuring all equipment, software, and systems used with the System; and (c) End Users use of the System.

8. Indemnities.

8.1 Intellectual Property Indemnity.

8.1.1 Subject to the terms and conditions of this Agreement, EcoFit will defend any suit brought by a third party against Customer to the extent based on a claim that any System infringes any patent, copyright, trade secret or trademark, and EcoFit will pay any final judgment rendered by a court of competent jurisdiction, or settlement agreed to in writing by EcoFit, with respect to such claim. These obligations are contingent upon Customer promptly notifying EcoFit in writing of any claims or threatened claims, EcoFit having sole control over the defense and all negotiations for settlement of any such claim, and Customer giving all reasonable assistance to EcoFit in the defense and settlement of the claim. These obligations are further subject to Customer being in full compliance with its payment obligations under this Agreement. EcoFit will not be responsible for any settlement it does not approve in writing. THE FOREGOING IS IN LIEU OF ANY WARRANTIES OF NONINFRINGEMENT, WHICH ARE DISCLAIMED.

8.1.2 If any System (excluding third party Systems) becomes, or in EcoFit's opinion is likely to become, the subject of an infringement claim, EcoFit may, at its option and sole discretion: (a) obtain for Customer the right to continue to use the System as provided in this Agreement; (b) replace the System with another product that provides similar functionality; or (c) if EcoFit determines that neither of the foregoing options are reasonably available, EcoFit may require that Customer cease use of the System and EcoFit will refund to Customer a pro-rated portion of the applicable Fees paid.

8.2 Limitations of Indemnity. EcoFit's obligations under Section 8.1 do not apply to any claims, damages or liabilities arising out of or relating to any of the following ("**Excluded Claims**"): (a) any product or component thereof that is not supplied by EcoFit to Customer under this Agreement; (b) the combination of any System with any other software, products, equipment, component, process or material in a manner not authorized in the documentation for such System; (c) any modification to the

System (unless made by EcoFit) if the alleged infringement arises from such modification; (d) use of the System in a manner not permitted by or in breach of this Agreement; (e) failure to use replacement or modified System that provides substantially similar functionality as the original System if the replacement or modified System would have rendered the System non-infringing; and (f) EcoFit's compliance with Customer's instructions, specifications or requirements. No indemnification for any third party products supplied by EcoFit is provided under this Agreement unless and to the extent such indemnification is provided to Customer under the terms of EcoFit's agreement with the licensor.

8.3 Indemnification by Customer. Customer will indemnify, hold harmless, and, at EcoFit's option, defend EcoFit from and against all costs, expenses (including reasonable attorneys' fees), damages, and liabilities resulting from any claim by any third party arising from or in connection with Excluded Claims or Customer's unauthorized use of the System.

8.4 Indemnification Process. The party seeking indemnification agrees to give the indemnifying party: (a) prompt written notice of such claim; (b) authority to control and direct the defense or settlement of such claim; and (c) such information and assistance as the indemnifying party may reasonably request, at indemnifying party's expense, in connection with such defense or settlement. Notwithstanding the foregoing, the indemnifying party will not settle any third-party claim against the indemnified party unless such settlement completely and forever releases the indemnified party with respect thereto or unless the indemnified party provides its prior written consent to such settlement. In any action that the indemnifying party provides defense on behalf of indemnified party, the indemnified party may participate in such defense at its own expense by counsel of its choice.

9. Limitation of Liability. The following provisions have been negotiated by the parties and reflect a fair allocation of risk and form an essential basis of the bargain and will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy:

9.1 AMOUNT. IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF ECOFIT IN CONNECTION WITH OR UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), OR OTHERWISE, EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER IN THE PRIOR 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THIS AGREEMENT WILL NOT INCREASE THIS MAXIMUM LIABILITY AMOUNT. IN NO EVENT WILL ECOFIT'S LICENSORS OR THIRD PARTY SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT.

9.2 TYPE. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL ECOFIT BE LIABLE TO CUSTOMER OR ANY USER FOR ANY: (A) SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; (B) LOST SAVINGS, PROFIT, DATA, USE, OR GOODWILL; (C) BUSINESS INTERRUPTION; (D) COSTS FOR THE PROCUREMENT OF SUBSTITUTE SYSTEM OR SERVICES; (E) PERSONAL INJURY OR DEATH; OR (F) PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT, REGARDLESS OF CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), OR OTHERWISE, AND EVEN IF NOTIFIED IN ADVANCE OF THE POSSIBILITIES OF SUCH DAMAGES.

9.3 THESE LIMITATIONS OF LIABILITY ARE FUNDAMENTAL TO THE BASIS OF THE BARGAIN UNDER THIS AGREEMENT, AND THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT ABSENT SUCH LIMITATIONS.

10. Confidentiality.

10.1 **Definitions.** For the purposes of this Agreement, a party receiving Confidential Information (as defined below) will be the “**Recipient**”, the party disclosing such information will be the “**Discloser**”, and “**Confidential Information**” means information marked or otherwise identified in writing by a party as proprietary or confidential, or information that, under the circumstances surrounding the disclosure, a reasonable person should recognize as being confidential; provided that Discloser’s Confidential Information does not include: (a) information already known or independently developed by Recipient without access to Discloser’s Confidential Information; (b) information that is publicly available through no wrongful act of Recipient; or (c) information received by Recipient from a third party who was free to disclose it without confidentiality obligations.

10.2 **Confidentiality Covenants.** Recipient hereby agrees that during the Term and at all times thereafter it will not: (a) disclose Confidential Information of the Discloser to any person, except to its own personnel or affiliates having a “need to know” and that have entered into written agreements no less protective of such Confidential Information than this Agreement, and to such other recipients as the Discloser may approve in writing; (b) use Confidential Information of the Discloser except to exercise its rights or perform its obligations under this Agreement; or (c) alter or remove from any Confidential Information of the Discloser any proprietary legend. Each party will take reasonable precautions to safeguard the other party’s Confidential Information. Those precautions will be at least as stringent as the precautions that the Recipient takes to protect its own Confidential Information of a similar type.

10.3 **Exceptions to Confidentiality.** Notwithstanding Section 10.2 of these General Terms, Recipient may disclose Discloser’s Confidential Information: (a) to the extent that such disclosure is required by applicable law or by the order of a court or similar judicial or administrative body, provided that, except to the extent prohibited by law, the Recipient promptly notifies the Discloser in writing of such required disclosure and cooperates with the Discloser to seek an appropriate protective order; (b) to its legal counsel and other professional advisors if and to the extent such persons need to know such Confidential Information in order to provide applicable professional advisory services in connection with the party’s business; or (c) in the case of EcoFit, to potential assignees, acquirers or successors of EcoFit if and to the extent such persons need to know such Confidential Information in connection with a potential sale, merger, amalgamation or other corporate transaction involving the business or assets of EcoFit.

11. Term. This Agreement is effective as of the Effective Date and will remain in effect for the Initial Term and any Renewal Terms specified in the Cover Page (collectively, the “**Term**”), unless earlier terminated in accordance with this Agreement.

12. Termination.

12.1 **Termination.** Either party may terminate this Agreement or any Addendum by giving to the other party written notice of termination upon the occurrence of any of the following events: (a) the other party breaches or defaults on any of the material terms or conditions of this Agreement (including Customer’s payment obligations under Section 4) and fails to cure such breach or default within thirty (30) days of receipt of written notice thereof; except that, in the event of any breach that is incapable of being cured, such termination will be effective immediately; (b) the other party makes any assignment for

the benefit of creditors or is unable to pay its debts as they mature in the ordinary course of business; or (c) any proceedings are instituted by or against the other party under any insolvency laws or for reorganization, receivership or dissolution. In addition to the foregoing, either party may terminate this Agreement for its convenience at any time upon not less than thirty (30) days' prior written notice to the other Party.

12.2 Effect of Termination. Unless otherwise specified in this Agreement, upon any expiration or termination of this Agreement: (a) Customer must immediately cease any and all use of the Cloud Services; (b) within ten (10) days of expiration or termination, Customer will destroy or deliver to EcoFit all copies of EcoFit's Confidential Information; (c) EcoFit may retain Customer's Confidential Information for its records, but the obligations of confidentiality with respect to such information set forth in Section 10 will survive for so long as such information is retained; (d) EcoFit will have no further obligation to provide any Cloud Services or perform any Services of any kind to Customer; and (e) if Customer terminated the Agreement for its convenience, all amounts payable for the then current term (i.e., the Initial Term or the Renewal Term, as applicable), including amounts not otherwise due or billed as of the effective date of termination, will become immediately due and payable. Expiration or termination of this Agreement will not limit EcoFit from pursuing any other remedies available to it, including injunctive relief, nor will any such expiration or termination relieve Customer's obligation to pay all amounts and Fees that have accrued or are otherwise owed by Customer under this Agreement up to the effective date of termination.

12.3 Survival. Upon any termination or expiration of this Agreement, provisions contained in this Agreement that by their nature and context are intended to survive completion of performance, expiration, termination, or cancellation of this Agreement, including Sections 2, 4, 6, 7.3, 9, 10, 12.3, 19, 21, 22, and 23 will survive.

13. Certain Remedies. Customer's failure to comply with the obligations of this Agreement will constitute unauthorized use of the System, entitling EcoFit to terminate this Agreement in whole or in part, withhold Cloud Services and Services, and exercise other remedies as provided in this Agreement and available under applicable law, including obtaining equitable relief in the event of a breach adversely affecting EcoFit's Confidential Information or intellectual property rights. In addition, if Customer fails to pay any fees in accordance with this Agreement or fails to comply with any of the license or confidentiality terms of this Agreement, EcoFit may, at its sole discretion, disable the System without any liability to Customer or any third party. Customer agrees to indemnify, defend, and hold harmless EcoFit with respect to any and all third party claims against EcoFit related to or in connection with any such disablement in accordance with this Section 13.

14. Assignment. This Agreement is binding upon and is for the benefit of the parties, their permitted successors and permitted assigns. Customer may not transfer, sublicense or otherwise assign this Agreement or any of its rights or obligations under this Agreement, by operation of law or otherwise, without EcoFit's prior written consent, which consent will not be unreasonably withheld. Any attempted transfer, sublicense or assignment by Customer in violation of this Section will be null and void. EcoFit may assign, transfer, or delegate this Agreement and any or all of its rights and obligations under this Agreement without Customer's consent.

15. Compliance with Laws. The parties will comply with all applicable laws, rules and regulations, including export laws, in its performance under this Agreement. Customer must ensure that its use of the System or Services complies in all respects and at all times with all applicable laws, statutes, regulations, ordinances or other rules promulgated by governing authorities that the parties or the System

are subject to, including by means of obtaining any permits, licenses, or approvals required with respect to applicable export regulations.

16. Export. Customer agrees not to directly or indirectly export, re-export or import any of the System or Services without first obtaining all required licenses, permits and permissions. EcoFit makes no representation or warranty that the System or Services may be exported without Customer first obtaining appropriate licenses or permits under applicable law, or that any such license or permit has been, will be, or can be obtained.

17. Force Majeure. EcoFit will be excused from any delays in performance of its obligations under this Agreement if such a delay results from compliance with any requirement of applicable law, acts of God, fire, strike, embargo, terrorist attack, war, insurrection or riot, acts or omissions of Customer or any third parties, or other causes beyond the reasonable control of EcoFit. Any delay resulting from any of such causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

18. Notices. All notices required by or relating to this Agreement must be in writing and sent by registered mail, return receipt requested, or via an internationally recognized express mail carrier (postage prepaid, return receipt requested), to the applicable party to this Agreement and addressed as set forth in the Cover Page, or to such other address as that party may have given by written notice in accordance with this provision. All notices required by or relating to this Agreement may also be communicated by electronic mail, if the sender also mails a hard copy of such notice to the aforementioned address.

19. Non-Solicitation. Customer will not, without the prior written consent of EcoFit, solicit, offer work to, employ, or contract with, directly or indirectly, on its own behalf or on behalf of its affiliates, any Personnel of EcoFit or the Personnel of EcoFit's affiliates during the Term or during the twelve (12) months following termination or expiration of this Agreement. For purposes of this Section, "Personnel" includes any individual whom EcoFit employs or has employed as a partner, employee, or independent contractor and with which Customer comes into direct contact during the Term.

20. No Third Party Beneficiaries. Except for those third parties that have licensed software or other intellectual property to EcoFit that is included as part of the System, no person or entity will be a third party beneficiary of this Agreement or have any right or cause of action hereunder.

21. Governing Law. This Agreement is governed by and construed in accordance with the laws of the Province of British Columbia, and the federal laws of Canada applicable therein, not including its conflict of law principles. The parties disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement.

22. Dispute Resolution.

22.1 Collection Disputes. Any Fee collection disputes arising out of the failure to pay by Customer will be commenced in and determined by a court of competent jurisdiction in the Province of British Columbia or, at EcoFit's discretion, in the jurisdiction of incorporation of the Customer. Each of the parties to this Agreement: (a) irrevocably and unconditionally consents and submits to the jurisdiction of such courts in any such action; (b) consents to service of process in accordance with the rules governing proceedings in any such court; and (c) irrevocably waives and covenants not to assert any objection to the laying of venue in any such court in any such action.

22.2 Arbitration.

22.2.1 Subject to Section 22.1, the parties agree to use the process in this Section to resolve any controversy, dispute, or claim arising out of or relating to this Agreement, including its negotiation, validity, existence, breach, termination, construction, or application or the rights, duties, or obligations of any party to this Agreement (a “**Dispute**”). However, nothing will restrict or prohibit either party from delivering a notice of arbitration at any time in order to protect its rights in relation to a Dispute. The arbitration provisions of this Agreement apply to claims by and against all parties and their affiliates, owners, guarantors, managers, directors, officers, employees, and representatives.

22.2.2 If a Dispute occurs between the parties so that one party is considering legal action against the other party, the party considering the legal action will provide the other party with a written request of a meeting between the parties to attempt to resolve the Dispute in good faith. The parties will attend and participate in a conciliation meeting within 30 days of the written request. Except where the parties are seeking injunctive relief, no legal action will be taken by either party until this meeting occurs or until after the 30 day period, whichever is earlier.

22.2.3 If the Dispute is not resolved at the above conciliation meeting, the Dispute will be referred to and determined by arbitration in accordance with the National Arbitration Rules of the ADR Institute of Canada, Inc. (the “**NADR Rules**”). Either party may commence the arbitration in accordance with the NADR Rules. The site of the arbitration will be Vancouver, British Columbia, Canada.

22.2.4 The language of the arbitration will be English and the arbitral tribunal will be comprised of one arbitrator. If the parties do not agree on the identity of the arbitrator within 15 days of the referral to arbitration, then the arbitral tribunal will be appointed by the ADR Institute of Canada. The arbitral tribunal will render its final award and the reasons for the award within 45 days of the conclusion of the hearing, unless such time is reduced or extended by the tribunal after giving the parties an opportunity to be heard. Any award or judgment on an award and any award for interim relief may be entered in any court having jurisdiction and will be final and binding on the parties and will not be subject to appeal.

22.2.5 No party is prohibited from seeking interim, interlocutory, or expedited remedies (including the use of arbitration rules providing for emergency measures of protection), in any forum having jurisdiction, including remedies to preserve or protect trademarks, Confidential Information, copyrights, or trade secrets or for extraordinary relief such as an injunction or eviction.

22.2.6 In addition to any other restriction on the tribunal in this Agreement, in no event will the arbitral tribunal award, or have any jurisdiction to award, punitive or exemplary damages against any party. No arbitration award will have an effect of preclusion or collateral estoppel in any other adjudication or arbitration.

23. General.

23.1 Severability. Any provision of this Agreement found by a tribunal or court of competent jurisdiction to be illegal or unenforceable will be severed from this Agreement and all other provisions of this Agreement will remain in full force and effect.

23.2 Waiver. A waiver of any provision of this Agreement must be in writing and a waiver in one instance will not preclude enforcement of such provision on other occasions.

23.3 Construction. Except as otherwise provided in this Agreement, the parties' rights and remedies under this Agreement are cumulative. The terms "include" and "including" mean, respectively, "include without limitation" and "including without limitation." The headings of sections of this Agreement are for reference purposes only and have no substantive effect.

23.4 Independent Contractors. EcoFit's relationship to Customer is that of an independent contractor, and neither party is an agent or partner of the other. Neither party will have, and will not represent to any third party that it has, any authority to act on behalf of the other party.

23.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, representations or other communications, whether oral or written. If there is a conflict or inconsistency between the Terms and Conditions and any Addendum, then the provisions of these Terms and Conditions will govern to the extent of such conflict or inconsistency; provided, however, that the provisions of the applicable Addendum will prevail over these Terms and Conditions to the extent the Addendum expressly refers to the provisions of these Terms and Conditions over which it prevails.

23.6 Amendments. EcoFit reserves the right to change these General Terms and the Addenda at any time by replacing them with a new version. It is Customer's obligation to monitor the EcoFit website for any such new versions. Customer's continued access to or use of the System after any changes to these General Terms or any Addenda indicates Customer's acceptance of such changes. It is Customer's responsibility to review these General Terms and the Addenda regularly.

23.7 English Language. It is the express wish of the parties that this Agreement and all related documents be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

23.8 Counterparts. This Agreement including the SOWs may be signed in counterparts. An electronic signature using a qualified electronic certificate or facsimile signature will be treated in all respects as having the same effect as an original signature.