

**ECOFIT MASTER AGREEMENT
PROFESSIONAL SERVICES ADDENDUM**

Last Updated: October 31, 2019

This Professional Services Addendum (“**Professional Services Addendum**”) is part of, subject to and governed by the terms and conditions of the EcoFit Master Agreement between Customer and EcoFit that references this Professional Services Addendum.

1. **Definitions.** Capitalized terms used but not defined in this Professional Services Addendum have the meanings set forth elsewhere in the Agreement.

2. **Statements of Work.** EcoFit may, from time to time, agree to perform services and provide deliverables to Customer that are not included in the then-current scope of Services provided under the Agreement (“**Projects**”). The parties will identify each Project and the terms and conditions relating to such Project in an Order or in a statement of work (“**SOW**”). Each SOW, when duly executed, will be incorporated into and subject to this Professional Services Addendum. In the event of a conflict or inconsistency between any SOW and this Professional Services Addendum or the Agreement, the Professional Services Addendum or the Agreement will govern, as applicable; provided, however, that the provisions of the applicable SOW will prevail over the Professional Services Addendum or the Agreement to the extent the SOW expressly refers to the provisions of the Professional Services Addendum or the Agreement over which it prevails.

3. **Services and Deliverables.** EcoFit will use commercially reasonable efforts to deliver all items expressly identified as a deliverable in an Order or in a SOW (“**Deliverables**”) and to perform all Services expressly set out in an Order or SOW. All Services will be performed remotely unless otherwise indicated in an Order or SOW as being an on-site provided service. Unless otherwise agreed to by the parties in an Order, SOW or in a separate written agreement or addendum to the Agreement, EcoFit will have no obligation to provide support and maintenance services for Deliverables.

4. **Resource Management.** EcoFit will, in its sole discretion, determine the number of personnel and the appropriate skill sets of such personnel necessary to perform the Services. EcoFit’s resources may include employees of EcoFit or subcontractors. The delegating or subcontracting of EcoFit’s obligations set out in this Professional Services Addendum will not relieve EcoFit from any obligation or liability under this Professional Services Addendum.

5. Project Term and Termination; Suspension.

5.1 **Project Term.** Each Project will begin effective on the effective date set out in the applicable Order or SOW (the “**Project Effective Date**”) and will continue for the term indicated in the Order or SOW, unless earlier terminated in accordance with the terms of the Agreement (the “**Project Term**”).

5.2 **Termination.** Without limiting any other termination right set out in the Agreement, either party may terminate any Project if the other party breaches on any of the material terms or conditions of the applicable Order, SOW or the terms and conditions of this Agreement as applicable to such Project 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 such breach that is incapable of being cured, such termination will be effective immediately.

5.3 **Suspension.** In addition to EcoFit's termination rights set out in the Agreement, upon any breach by Customer of the applicable Order, SOW, or the term and conditions of this Agreement as applicable to a Project, EcoFit will be entitled, in its discretion, to suspend the Services provided under such Project until such time as such breach or default is remedied by Customer.

5.4 **Effect of Termination.** Without limiting Section 12.2 of the General Terms, Customer will pay all Fees and related expenses for the portion of Services performed or Deliverables completed as of the effective date of termination.

6. Milestones; Deliverables and Acceptance; Repair of Defects.

6.1 **Milestones.** For any Deliverable, Service, or other performance obligation of EcoFit described as a milestone in an applicable Project (each, a "Milestone"), EcoFit will use commercially reasonable efforts to complete such Milestone on or before the deadline specified for such Milestone in the applicable Project. Any delay in receiving Customer Resources will cause EcoFit a delay in performing the Services and will result in a delay in EcoFit's ability to meet the Milestones.

6.2 **Deliverables and Acceptance.** Unless otherwise stated in the applicable Order or SOW, within ten (10) business days of EcoFit's completion of any Milestone or Deliverable, Customer will provide EcoFit with written notice of its acceptance or rejection of such Milestone or Deliverable. Customer may not reject any Milestone or Deliverable that substantially complies with the requirements set out in the applicable Order or SOW, and Customer's failure to respond within such ten (10) day period will constitute Customer's acceptance of the applicable Milestone or Deliverable. If Customer rejects a Milestone or Deliverable, EcoFit will use commercially reasonable efforts to correct the deficiencies set out in Customer's notice of rejection for such Milestone or Deliverable. Once EcoFit has notified Customer that it has completed such corrections, Customer will have seven (7) days from the date of such notice to re-test the Milestone or Deliverable. Customer's failure to respond within such seven (7) day period will constitute Customer's acceptance of the applicable Milestone or Deliverable. The process set out in this Section 6.2 will continue until Customer notifies EcoFit of its acceptance of a Milestone or Deliverable, or until a Milestone or Deliverable is deemed accepted as set forth herein, but will in no event repeat more than three (3) times. If Customer has provided three rejection notices for the same Milestone or Deliverable, then the parties will treat the matter as a Dispute and will resolve such Dispute in accordance with Section 22 of the General Terms. Notwithstanding anything to the contrary in this Agreement, if Customer uses any Deliverable in a production or commercial environment (e.g., "go live" with the Deliverable), Customer will be deemed to have accepted such Deliverable as of the date such Deliverable was first used in such production or commercial environment.

7. Customer Dependencies.

7.1 Customer will cooperate with EcoFit in the performance of the Services and in the development of Deliverables, including by providing access (whether onsite or remotely, as specified in the applicable Order or SOW) to Customer's personnel, systems, equipment, or communications facilities, as reasonably requested by EcoFit from time to time. If Customer has not provided all necessary cooperation or information to EcoFit, or EcoFit is otherwise denied or delayed access or information by Customer, then EcoFit will be excused, without liability, from performing any further Services. Such failure to perform Services resulting from Customer's failures will not relieve Customer from its payment obligations to EcoFit.

7.2 Unless otherwise set out in the applicable Order or SOW, for each Order or SOW, Customer will: (a) provide timely access to all information requested by EcoFit for matters related to the

Services; (b) provide administrator-level access to EcoFit to enable service delivery, installation, and configuration; (c) make available at no charge to EcoFit all information and key Customer personnel required by EcoFit in connection with the Services (collectively, "**Customer Resources**"); (d) accept each completed Milestone or Deliverable prior to EcoFit commencing work on the next Milestone or Deliverable; and (e) Customer will log all incidents with EcoFit as soon as they become aware of the incident.

8. Change Requests.

8.1 **Changes.** Any service or deliverable not specifically set out in an Order or SOW will be considered out-of-scope and not included in the Services or Deliverables. The parties may request any change to the nature or scope of any Services or Deliverables then-currently provided (each, a "**Change**") pursuant to this Section 8.

8.2 **Change Order Process.** If, after EcoFit's commencement of Services set out in an Order or SOW, either party requires a Change, such party will set out the new requirements in writing and deliver such request to the other party. Following a request made by Customer (or, in the case of a request made by EcoFit, concurrently with such request), EcoFit will use commercially reasonable efforts to describe in writing the estimated impact of such Change to the costs, Milestones, timeline, Customer responsibilities, and other relevant aspects of the Services or Deliverables. If Customer agrees with such written description of the estimated impact, then the parties will negotiate in good faith a Change order setting out the detailed terms and conditions pursuant to which the Change will be implemented ("**Change Order**"). If Customer disagrees with such written description of the estimated impact and the parties are unable to reach agreement on the impact of such proposed Change, then no such Changes to the Order or SOW will be effective, and EcoFit will perform the Services in accordance with the original Order or SOW.

9. Limitation of Liability. NOTWITHSTANDING SECTION 9.1 OF THE GENERAL TERMS AND CONDITIONS, IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY IN CONNECTION WITH OR UNDER THIS PROFESSIONAL SERVICES ADDENDUM, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), OR OTHERWISE, EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THE SPECIFIC ORDER OR SOW OUT OF WHICH THE LIABILITY AROSE. EcoFit's liability will be further limited as provided in the Terms and Conditions.

10. Disclaimers. Without limiting Section 7.3 of the General Terms Conditions: (a) EcoFit will have no liability for loss or recovery of data or programs or for Customer's failure to properly back-up any data or programs; and (b) Customer will be responsible for, and assumes the risk of, any problems resulting from the content, accuracy, completeness and consistency of Customer Resources.

11. No Assignment or Transfer of Intellectual Property. Without limiting Section 2 of the General Terms, EcoFit retains all ownership and intellectual property rights in and to: (a) the Services; (b) the Deliverables; (c) anything developed or delivered by or on behalf of EcoFit under this Professional Services Addendum, any Order or any SOW; and (d) any modifications or enhancements to (a), (b) or (c). All rights not expressly granted by EcoFit to Customer under this Professional Services Addendum, any Order or any SOW are reserved.

12. No Exclusivity. Unless otherwise specified in the applicable Order or SOW, all Deliverables are non-exclusive and may be provided to any or all EcoFit customers in EcoFit's sole discretion.

13. Fees and Expenses. In consideration for the Services or Deliverables performed or provided to Customer, Customer will pay to EcoFit the amounts set forth in each applicable Order or SOW. Unless otherwise agreed to by the parties in writing, EcoFit must receive all prepayment amounts listed in an Order or SOW before the commencement of any services thereunder. Any permitted suspension of the Services by EcoFit pursuant to the terms of the Agreement will not excuse Customer from its obligation to make payments under the Agreement. Customer agrees to pay all reasonable, pre-approved in writing, out-of-pocket expenses incurred by EcoFit in connection with performing Services or delivering any Deliverables, including all reasonable travel expenses.

14. **Survival.** Upon any termination or expiration of the Agreement, provisions contained in this Professional Services Addendum that by their nature and context are intended to survive termination of the Agreement, including Sections 5.4, 9, 10, and 13, will survive.