Data Processing Agreement

This Data Processing Agreement (this "**Agreement**"), is entered into by and between Customer and Ecolab and forms part of the Terms and Conditions entered into by the parties. This Agreement applies to and takes precedence over the Terms and Conditions or the Order Form to the extent of any conflict.

1.   For purposes of this Agreement:

   a.   "**Data Protection Laws**" means the GDPR and all applicable Member State data protection laws and regulations.

   b.   "**EU Standard Contractual Clauses**" means the standard contractual clauses for the transfer of personal data to processors established in third countries (Commission Decision 2010/87/EC) with optional clauses removed.

   c.   "**GDPR**" means the General Data Protection Regulation 2016/679 and any applicable national implementing laws as amended from time to time and will include any laws of the United Kingdom that implement the law.

   d.   "**Member State**" means a country that is a member of the European Union or the European Economic Area.

   e.   "**Personal Data**" means any information relating to an identified or identifiable individual which information is subject to the GDPR.

   f.   "**Personal Data Breach**" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

   g.   "**Process**" and "**Processing**" mean any operation or set of operations performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, creating, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

   h.   "**Supervisory Authority**" means an independent public authority which is established by a Member State pursuant to the GDPR.

2.   This Agreement applies to the Personal Data that Service Provider receives from Customer, or otherwise Processes for or on behalf of Customer, in connection with the Agreement.

3.   By way of background, but without limiting the scope of this Agreement, the Agreement involves the following:

   a.   *Subject matter, nature and purpose of Processing*: Digital food safety. See the Agreement for details.

   b.   *Duration of Processing*: For the term of the Agreement, and any extensions thereof.

   c.   *Categories of Personal Data typically subject to Processing under the Agreement include*:

- Customer employee's name
- Customer employee's position/title

- Customer employee's email address
- Customer's business address
- Customer's phone number
- Customer's direct debit banking information

      d.   *Typical categories of data subjects (i.e., the individuals to whom the Personal Data relate)*: Employees of Ecolab's customers.

4. For purposes of Data Protection Laws, Service Provider acts as a Processor of Personal Data on behalf of Customer. Service Provider will Process the Personal Data only on documented instructions from Customer, including with regard to transfers of Personal Data to a third country, unless Service Provider is required to Process the Personal Data by European Union or Member State law to which Service Provider is subject. In such case, Service Provider shall inform Customer of that legal requirement before Processing, unless that law prohibits providing such information on important grounds of public interest within the meaning of the GDPR.

5. Service Provider shall immediately inform Customer if, in Service Provider's reasonable opinion, an instruction from Customer infringes the GDPR or other European Union or Member State Data Protection Laws.

6. Service Provider may subcontract the collection or other Processing of Personal Data only in compliance with the conditions for subprocessing set forth in the GDPR. Customer hereby authorizes Service Provider to use subprocessors from time to time. Upon Customer's request, Service Provider will provide Customer with a list of subprocessors. Where Service Provider engages another processor for carrying out specific processing activities on behalf of the Customer, the same data protection obligations as set out in this Agreement shall be imposed on that other processor. Where that other processor fails to fulfil its data protection obligations, the Service Provider shall remain fully liable to the Customer for the performance of that other processor's obligations.

7. Service Provider will ensure that the persons Service Provider authorizes to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

8. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing, as well as the risk of varying likelihood and severity for impact on the individuals to whom the Personal Data relates, Service Provider shall implement appropriate technical and organizational measures designed to ensure a level of security appropriate to the risk as identified in Article 32 of the GDPR, including the following (among other things) as appropriate:

      a.   the pseudonymization and encryption of Personal Data;

      b.   the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;

      c.   the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and

      d.   a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the Processing.

In assessing the appropriate level of security, Service Provider shall in particular take account of the risks presented by the transfer and Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to the Personal Data.

9.   Taking into account the nature of the Processing, Service Provider will assist Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Customer's obligation to respond to requests by individuals for exercising their rights under the GDPR (such as rights to access their Personal Data).

10.   Service Provider will assist Customer in ensuring Customer's compliance with the security obligations of the GDPR, as relevant to Service Provider's role in Processing the Personal Data, taking into account the nature of Processing and the information available to Service Provider.

11.   Service Provider will comply with the Personal Data Breach-related obligations directly applicable to it under the GDPR and, taking into account the nature of Processing and the information available to Service Provider, will assist Customer in complying with Customer's obligations under Article 33 and 34 of the GDPR.

12.   If requested by Customer, Service Provider will provide reasonable assistance to and cooperation with Customer for Customer's performance of a data protection impact assessment of the Processing or proposed Processing of the Personal Data involving Service Provider.

13.   If requested by Customer, Service Provider will provide reasonable assistance to and cooperation with Customer for Customer's consultation with Supervisory Authorities in relation to the Processing or proposed Processing of the Personal Data involving Service Provider.

14.   Service Provider will, at the choice of Customer, return to Customer and/or delete all Personal Data, including all copies of such Personal Data, upon the end of the provision of services relating to Processing except to the extent that European Union or Member State law requires storage of the Personal Data.

15.   Service Provider will make available to Customer all information necessary to demonstrate compliance with this Agreement and will allow for and contribute to audits, including inspections, conducted by Customer or another auditor mandated by Customer.

16.   The parties agree to enter into the EU Standard Contractual Clauses as set out in EXHIBIT 1.

EXHIBIT 1
EU STANDARD CONTRACTUAL CLAUSES

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection the data exporter (the entity identified as "**Customer**" in the Agreement) and the data importer (the entity identified as "**Ecolab**" in the Agreement) (each a **party**; together the **parties**), HAVE AGREED on the following contractual clauses (the **Clauses**) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

The Parties agree that references in the Clauses to Directive 95/46/EC shall be replaced by reference to the corresponding sections in the General Data Protection Regulation (EU) 2017/679 (GDPR) at the time the GDPR will become applicable and Directive 95/46/EC will be repealed.

Clause 1

Definitions

For the purposes of the Clauses:

personal data, **special categories of data**, **process/processing**, **controller**, **processor**, **data subject and supervisory authority** shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

the **data exporter** means the controller who transfers the personal data;

the **data importer** means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

the **subprocessor** means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

the **applicable data protection law** means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

technical and organisational security measures means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1.   The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

(a)   that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

that it will ensure compliance with the security measures;

that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

(a)   to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

that it will promptly notify the data exporter about:

i.   any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,

ii.   any accidental or unauthorised access, and

iii.   any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of

confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

that the processing services by the subprocessor will be carried out in accordance with Clause 11;

to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1.   The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1.   The data importer agrees that if the data subject invokes against its third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

(a)   to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

to refer the dispute to the courts in the Member State in which the data exporter is established.

The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract

or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

1.   The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.