

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

Ecoark Holdings, Inc.

Form: 8-K

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **June 13, 2017**

Ecoark Holdings, Inc.

(Exact Name of Registrant as Specified in Charter)

Nevada

(State or other jurisdiction
of incorporation)

000-53361

(Commission File Number)

30-0680177

(IRS Employer
Identification No.)

3333 S Pinnacle Hills Parkway, Suite 220, Rogers AR

(Address of principal executive offices)

72758

(Zip Code)

Registrant's telephone number, including area code: (479) 259-2977

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

As described below in Item 5.07 of this Current Report on Form 8-K, on June 13, 2017, the stockholders of Ecoark Holdings, Inc. (the "Company") approved the Ecoark Holdings, Inc. 2017 Omnibus Incentive Plan (the "Plan"). A description of the material terms of the Plan is set forth in the Company's Definitive Proxy Statement on Schedule 14A filed with the Securities and Exchange Commission on May 1, 2017 (the "Proxy Statement") and is incorporated herein by reference in its entirety. The Plan is incorporated into this Current Report on Form 8-K as Exhibit 10.1 by reference to Exhibit 99.1 to the Company's Registration Statement on Form S-8 dated and filed with the SEC on June 14, 2017 (File No. 333-218748). Additionally, forms of the Stock Option Agreement, Restricted Stock Award Agreement and Restricted Stock Unit Award Agreement relating to awards to be made pursuant to the Plan are attached as Exhibits 10.2, 10.3 and 10.4 to this Current Report on Form 8-K, respectively, and are incorporated by reference herein.

Item 5.07 Submission of Matters to a Vote of Security Holders.

The 2017 annual meeting of stockholders (the "Annual Meeting") of the Company was held virtually on June 13, 2017 at 10:00 a.m. (central time) at www.virtualshareholdermeeting.com/EARK. During the Annual Meeting, the Company's stockholders voted on five proposals. The proposals are described in the Proxy Statement. The voting results for each of the proposals are as follows.

1. *Election of Directors.* The eight director nominees named in the Proxy Statement were elected to the Company's Board of Directors by the following voting results:

Name	Votes For	Votes Abstained	Broker Non-Votes
Randy S. May	14,043,441	18,088	12,621,488
John P. Cahill	13,978,726	82,803	12,621,488
M. Susan Chambers	14,047,678	13,851	12,621,488
Terrence D. Matthews	14,051,219	10,310	12,621,488
Peter Mehring	14,050,779	10,750	12,621,488
Gary Metzger	14,050,783	10,746	12,621,488
Steven K. Nelson	14,051,212	10,317	12,621,488
Charles Rateliff	14,050,784	10,745	12,621,488

2. *Approval of the Ecoark Holdings, Inc. 2017 Omnibus Incentive Plan.* The stockholders voted upon and approved the Plan, with the following voting results:

Votes For	Votes Against	Abstentions	Broker Non-Votes
13,945,996	25,493	90,040	12,621,488

3. *Advisory Vote to Approve Executive Compensation.* The stockholders approved a non-binding advisory resolution approving the compensation of the Company's named executive officers, with the following voting results:

Votes For	Votes Against	Abstentions	Broker Non-Votes
13,807,549	91,217	162,763	12,621,488

4. *Advisory Vote on Frequency of Future Advisory Votes on Executive Compensation.* The stockholders recommended, on an advisory non-binding basis, that the Company hold future advisory votes to approve the compensation of the Company's named executive officers every year by the following votes:

Every Year	Every Two Years	Every Three Years	Votes Abstained	Broker Non-Votes
13,890,693	40,803	58,533	71,500	12,621,488

The Company has considered the outcome of this advisory vote and has determined, as was recommended by the Company's Board of Directors in the Proxy Statement, that the Company will hold future say-on-pay votes on an annual basis until the occurrence of the next advisory vote on the frequency of say-on-pay votes. The next advisory vote regarding the frequency of say-on-pay votes is required to occur no later than the Company's 2023 annual meeting of stockholders.

5. *Ratification of KBL, LLP as the Company's Independent Registered Public Accounting Firm.* The stockholders ratified the appointment of KBL, LLP as the Company's independent registered public accounting firm for the fiscal year ending March 31, 2018, with the following voting results:

Votes For	Votes Against	Votes Abstained
26,197,420	10,712	474,885

Item 9.01 Financial Statements and Exhibits.

- (d) *Exhibits.*

Exhibit No.	Description
10.1	Ecoark Holdings, Inc. 2017 Omnibus Incentive Plan, effective June 13, 2017 (incorporated by reference to Exhibit 99.1 to the Company's Registration Statement on Form S-8 dated and filed with the SEC on June 14, 2017 (File No. 333-218748))
10.2	Form of Stock Option Agreement under the Ecoark Holdings, Inc. 2017 Omnibus Incentive Plan
10.3	Form of Restricted Stock Award Agreement under the Ecoark Holdings, Inc. 2017 Omnibus Incentive Plan
10.4	Form of Restricted Stock Unit Award Agreement under the Ecoark Holdings, Inc. 2017 Omnibus Incentive Plan

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: June 19, 2017

ECOARK HOLDINGS, INC.

By: /s/ Jay Puchir

Name: Jay Puchir

Title: Chief Executive Officer

EXHIBIT INDEX

Exhibit No.	Description
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10.2	<u>Form of Stock Option Agreement under the Ecoark Holdings, Inc. 2017 Omnibus Incentive Plan</u>
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10.4	<u>Form of Restricted Stock Unit Award Agreement under the Ecoark Holdings, Inc. 2017 Omnibus Incentive Plan</u>

ECOARK HOLDINGS, INC.
2017 OMNIBUS INCENTIVE PLAN

Notice of Stock Option Grant

You (the "Optionee") have been granted the following option (the "Option") to purchase Common Stock of Ecoark Holdings, Inc. (the "Company"), par value \$0.001 per share ("Share"), pursuant to the Ecoark Holdings, Inc. 2017 Omnibus Incentive Plan (the "Plan"):

Name of Optionee:	[NAME]
Total Number of Shares Subject to Option:	[NUMBER]
Type of Option:	[ISO or NQSO]
Exercise Price Per Share:	\$(PRICE)
Effective Date of Grant:	[DATE]
Vesting Schedule:	[VESTING SCHEDULE]
Expiration Date:	[DATE]

By your signature and the signature of the Company's representative below, you and the Company agree and acknowledge that this Option is granted under and governed by the terms and conditions of the Plan and the attached Stock Option Agreement, which are incorporated herein by reference, and that you have been provided with a copy of the Plan and Stock Option Agreement.

Grantee:

Ecoark Holdings, Inc.

By: _____
 Name: [NAME]

By: _____
 Name: _____
 Title: _____

ECOARK HOLDINGS, INC.
2017 OMNIBUS INCENTIVE PLAN

Stock Option Agreement

Section 1. Grant of Option.

(a) **Option.** On the terms and conditions set forth in the Notice of Stock Option Grant (the “Grant Notice”) and this Stock Option Agreement (the “Agreement”), the Company grants to the Optionee on the Effective Date of Grant the option (the “Option”) to purchase at the Exercise Price the number of Shares set forth in the Grant Notice.

(b) **Plan and Defined Terms.** The Option is granted pursuant to the Plan. All terms, provisions, and conditions applicable to the Option set forth in the Plan and not set forth herein are hereby incorporated by reference herein. To the extent any provision hereof is inconsistent with a provision of the Plan, the provisions of the Plan will govern. All capitalized terms that are used in the Grant Notice or this Agreement and not otherwise defined therein or herein shall have the meanings ascribed to them in the Plan.

Section 2. Right to Exercise.

The Option hereby granted shall be exercised by written notice to the Committee, specifying the number of Shares the Optionee desires to purchase together with provision for payment of the Exercise Price. Subject to such limitations as the Committee may impose (including prohibition of one more of the following payment methods), payment of the Exercise Price may be made by (a) check payable to the order of the Company, for an amount in United States dollars equal to the aggregate Exercise Price of such Shares, (b) by tendering to the Company Shares having an aggregate Fair Market Value equal to such Exercise Price, (c) by broker-assisted exercise, or (d) by a combination of such methods. The Company may require the Optionee to furnish or execute such other documents as the Company shall reasonably deem necessary (i) to evidence such exercise and (ii) to comply with or satisfy the requirements of the Securities Act of 1933, as amended, the Exchange Act, applicable state or non-U.S. securities laws or any other law.

Section 3. Term and Expiration.

(a) **Basic Term.** Subject to earlier termination pursuant to the terms here, the Option shall expire on the expiration date set forth in the Grant Notice.

(b) **Termination of Employment or Service.** If the Optionee's employment or service as a Director or Consultant, as the case may be, is terminated, the Option shall expire on the earliest of the following occasions:

(i) The expiration date set forth in the Grant Notice;

(ii) The date [three months] following the termination of the Optionee's employment or service for any reason other than Cause, death, or Disability;

(iii) The date [one year] following the termination of the Optionee's employment or service due to death or Disability; or

(iv) The date of termination of the Optionee's employment or service for Cause.

The Optionee may exercise all or part of this Option at any time before its expiration under the preceding sentence, but, subject to the following sentence, only to the extent that the Option had become vested before the Optionee's employment or service terminated. When the Optionee's employment or service terminates, this Option shall expire immediately with respect to the number of Shares for which the Option is not yet vested. If the Optionee dies after termination of employment or service, but before the expiration of the Option, all or part of this Option may be exercised (prior to expiration) by the personal representative of the Optionee or by any person who has acquired this Option directly from the Optionee by will, bequest or inheritance, but only to the extent that the Option was vested and exercisable upon termination of the Optionee's employment or service.

(c) Definition of "Cause." The term "Cause" shall have the meaning ascribed to such term in the Optionee's employment agreement with the Company or any Subsidiary. If the Optionee's employment agreement does not define the term "Cause," or if the Optionee has not entered into an employment agreement with the Company or any Subsidiary, the term "Cause" shall mean (i) the willful engaging by the Optionee in misconduct that is demonstrably injurious to the Company or any Parent or Subsidiary (monetarily or otherwise), (ii) the Optionee's conviction of, or pleading guilty or nolo contendere to, a felony involving moral turpitude, or (iii) the Optionee's violation of any confidentiality, non-solicitation, or non-competition covenant to which the Optionee is subject.

(d) Definition of "Disability." The term "Disability" shall have the meaning ascribed to such term in the Optionee's employment agreement with the Company or any Subsidiary. If the Optionee's employment agreement does not define the term "Disability," or if the Optionee has not entered into an employment agreement with the Company or any Subsidiary, the term "Disability" shall mean the Optionee's entitlement to long-term disability benefits pursuant to the long-term disability plan maintained by the Company or in which the Company's employees participate.

Section 4. Transferability of Option.

The Option shall not be transferable by the Optionee other than by will or the laws of descent and distribution, and the Option shall be exercisable during the Optionee's lifetime only by the Optionee or on his or her behalf by the Optionee's guardian or legal representative.

Section 5. Miscellaneous Provisions.

(a) Acknowledgements. The Optionee hereby acknowledges that he or she has read and understands the terms of the Plan and this Agreement, and agrees to be bound by their respective terms and conditions. The Optionee acknowledges that there may be tax consequences upon the exercise or transfer of the Option and that the Optionee should consult an independent tax advisor prior to any exercise of the Option.

(b) Tax Withholding. Pursuant to Article 20 of the Plan, the Company shall have the power and the right to deduct or withhold, or require the Optionee to remit to the Company, an amount sufficient to satisfy any federal, state and local taxes (including the Optionee's FICA obligations) required by law to be withheld with respect to this Option. The Committee may condition the delivery of Shares upon the Optionee's satisfaction of such withholding obligations. The Optionee may elect to satisfy all or part of such withholding requirement by tendering previously-owned Shares or by having the Company withhold Shares having a Fair Market Value equal to the minimum statutory withholding (based on minimum statutory withholding rates for federal, state and local tax purposes, as applicable, including payroll taxes) that could be imposed on the transaction, and, to the extent the Committee so permits, amounts in excess of the minimum statutory withholding to the extent it would not result in additional accounting expense. Such election shall be irrevocable, made in writing, signed by the Optionee, and shall be subject to any restrictions or limitations that the Committee, in its sole discretion, deems appropriate.

(c) Notice Concerning Disqualifying Dispositions. If the Option is an Incentive Stock Option, the Optionee shall notify the Committee of any disposition of Shares issued pursuant to the exercise of the Option if the disposition constitutes a "disqualifying disposition" within the meaning of Sections 421 and 422 of the Code (or any successor provision of the Code then in effect relating to disqualifying dispositions). Such notice shall be provided by the Optionee to the Committee in writing within 10 days of any such disqualifying disposition.

(d) Rights as a Stockholder. Neither the Optionee nor the Optionee's transferee or representative shall have any rights as a stockholder with respect to any Shares subject to this Option until the Option has been exercised and Share certificates have been issued to the Optionee, transferee or representative, as the case may be.

(e) Ratification of Actions. By accepting this Agreement, the Optionee and each person claiming under or through the Optionee shall be conclusively deemed to have indicated the Optionee's acceptance and ratification of, and consent to, any action taken under the Plan or this Agreement and Grant Notice by the Company, the Board, or the Committee.

(f) Notice. Any notice required by the terms of this Agreement shall be given in writing and shall be deemed effective upon personal delivery or upon deposit with the United States Postal Service, by registered or certified mail, with postage and fees prepaid. Notice shall be addressed to the Company at its principal executive office and to the Optionee at the address that he or she most recently provided in writing to the Company.

(g) Choice of Law. This Agreement and the Grant Notice shall be governed by, and construed in accordance with, the laws of the State of Nevada, without regard to any conflicts of law or choice of law rule or principle that might otherwise cause the Plan, this Agreement or the Grant Notice to be governed by or construed in accordance with the substantive law of another jurisdiction.

(h) Arbitration. Any dispute or claim arising out of or relating to the Plan, this Agreement or the Grant Notice shall be settled by binding arbitration before a single arbitrator in Nevada and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall decide any issues submitted in accordance with the provisions and commercial purposes of the Plan, this Agreement and the Grant Notice, provided that all substantive questions of law shall be determined in accordance with the state and Federal laws applicable in the state in which the Company is incorporated, without regard to internal principles relating to conflict of laws.

(i) Modification or Amendment. This Agreement may only be modified or amended by written agreement executed by the parties hereto; provided, however, that the adjustments permitted pursuant to Article 4.3 of the Plan may be made without such written agreement.

(j) Severability. In the event any provision of this Agreement shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining provisions of this Agreement, and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been included.

(k) References to Plan. All references to the Plan shall be deemed references to the Plan as may be amended from time to time.

(l) Section 409A Compliance. To the extent applicable, it is intended that the Plan and this Agreement comply with the requirements of Code Section 409A and any related regulations or other guidance promulgated with respect to such Section by the U.S. Department of the Treasury or the Internal Revenue Service and the Plan and the Award Agreement shall be interpreted accordingly.

ECOARK HOLDINGS, INC.
2017 OMNIBUS INCENTIVE PLAN

Notice of Restricted Stock Grant

You (the "Grantee") have been granted the following award of restricted Common Stock (the "Restricted Stock") of Ecoark Holdings, Inc. (the "Company"), par value \$0.001 per share (the "Shares"), pursuant to the Ecoark Holdings, Inc. 2017 Omnibus Incentive Plan (the "Plan");

Name of Grantee:	[NAME]
Number of Shares of Restricted Stock Granted:	[NUMBER]
Effective Date of Grant:	[DATE]
Vesting and Period of Restriction:	[VESTING SCHEDULE]

By your signature and the signature of the Company's representative below, you and the Company agree and acknowledge that this grant of Restricted Stock is granted under and governed by the terms and conditions of the Plan and the attached Restricted Stock Award Agreement, which are incorporated herein by reference, and that you have been provided with a copy of the Plan and Restricted Stock Agreement.

Grantee:

Ecoark Holdings, Inc.

By: _____
 Name: [NAME]

By: _____
 Name: _____
 Title: _____

ECOARK HOLDINGS, INC.
2017 OMNIBUS INCENTIVE PLAN

Restricted Stock Award Agreement

Section 1. Grant of Restricted Stock

(a) Restricted Stock. On the terms and conditions set forth in the Notice of Restricted Stock Grant (the "Grant Notice") and this Restricted Stock Award Agreement (the "Agreement"), the Company grants to the Grantee on the Effective Date of Grant the Shares of Restricted Stock (the "Restricted Stock") set forth in the Grant Notice.

(b) Plan and Defined Terms. The Restricted Stock is granted pursuant to the Plan. All terms, provisions, and conditions applicable to the Restricted Stock set forth in the Plan and not set forth herein are hereby incorporated by reference herein. To the extent any provision hereof is inconsistent with a provision of the Plan, the provisions of the Plan will govern. All capitalized terms that are used in the Grant Notice or this Agreement and not otherwise defined therein or herein shall have the meanings ascribed to them in the Plan.

Section 2. Forfeiture and Transfer Restrictions

(a) Forfeiture Restrictions. If the Grantee's employment or service as a Director or Consultant, as the case may be, is terminated for any reason other than (i) death, (ii) Disability (as defined below) or (iii) termination by the Company and its Subsidiaries upon a Change in Control, the Grantee shall, for no consideration, forfeit to the Company the Shares of Restricted Stock to the extent such Shares are subject to a Period of Restriction at the time of such termination. If the Grantee's employment or service as a Director or Consultant, as the case may be, terminates due to the Grantee's death or Disability, or is terminated by the Company and its Subsidiaries upon a Change in Control while Shares of Restricted Stock are subject to a Period of Restriction, the Period of Restriction with respect to such Shares shall lapse, and the Shares shall vest and become free of the forfeiture and transfer restrictions described in this Section 2, on the date of the Grantee's termination of employment or service.

The term "Disability" shall have the meaning ascribed to such term in the Grantee's employment agreement with the Company or any Subsidiary. If the Grantee's employment agreement does not define the term "Disability," or if the Grantee has not entered into an employment agreement with the Company or any Subsidiary, the term "Disability" shall mean the Grantee's entitlement to long-term disability benefits pursuant to the long-term disability plan maintained by the Company or in which the Company's employees participate.

(b) Transfer Restrictions. During the Period of Restriction, the Restricted Stock may not be sold, assigned, pledged, exchanged, hypothecated or otherwise transferred, encumbered or disposed of to the extent such Shares are subject to a Period of Restriction.

(c) Lapse of Restrictions. The Period of Restriction shall lapse as to the Restricted Stock in accordance with the Grant Notice. Subject to the terms of the Plan and Section 4(a) hereof, upon lapse of the Period of Restriction, the Grantee shall own the Shares that are subject to this Agreement free of all restrictions otherwise imposed by this Agreement.

Section 3. Stock Certificates

As soon as practicable following the grant of Restricted Stock, the Shares of Restricted Stock shall be registered in the Grantee's name in certificate or book-entry form. If a certificate is issued, it shall bear an appropriate legend referring to the restrictions and it shall be held by the Company, or its agent, on behalf of the Grantee until the Period of Restriction has lapsed. If the Shares are registered in book-entry form, the restrictions shall be placed on the book-entry registration. The Grantee may be required to execute and return to the Company a blank stock power for each Restricted Stock certificate (or instruction letter, with respect to Shares registered in book-entry form), which will permit transfer to the Company, without further action, of all or any portion of the Restricted Stock that is forfeited in accordance with this Agreement.

Except for the transfer restrictions, and subject to such other restrictions, if any, as determined by the Committee, the Grantee shall have all other rights of a holder of Shares, including the right to receive dividends paid (whether in cash or property) with respect to the Restricted Stock and the right to vote (or to execute proxies for voting) such Shares. Unless otherwise determined by the Committee, if all or part of a dividend in respect of the Restricted Stock is paid in Shares or any other security issued by the Company, such Shares or other securities shall be held by the Company subject to the same restrictions as the Restricted Stock in respect of which the dividend was paid.

Section 4. Miscellaneous Provisions

(a) Tax Withholding. Pursuant to Article 20 of the Plan, the Company shall have the power and right to deduct or withhold, or require the Grantee to remit to the Company, an amount sufficient to satisfy any federal, state and local taxes (including the Grantee's FICA obligations) required by law to be withheld with respect to this Award. The Committee may condition the delivery of Shares upon the Grantee's satisfaction of such withholding obligations. The Grantee may elect to satisfy all or part of such withholding requirement by tendering previously-owned Shares or by having the Company withhold Shares having a Fair Market Value equal to the minimum statutory withholding (based on minimum statutory withholding rates for federal, state and local tax purposes, as applicable, including payroll taxes) that could be imposed on the transaction, and, to the extent the Committee so permits, amounts in excess of the minimum statutory withholding to the extent it would not result in additional accounting expense. Such election shall be irrevocable, made in writing, signed by the Grantee, and shall be subject to any restrictions or limitations that the Committee, in its sole discretion, deems appropriate.

(b) Ratification of Actions. By accepting this Agreement, the Grantee and each person claiming under or through the Grantee shall be conclusively deemed to have indicated the Grantee's acceptance and ratification of, and consent to, any action taken under the Plan or this Agreement and Grant Notice by the Company, the Board or the Committee.

(c) Notice. Any notice required by the terms of this Agreement shall be given in writing and shall be deemed effective upon personal delivery or upon deposit with the United States Postal Service, by registered or certified mail, with postage and fees prepaid. Notice shall be addressed to the Company at its principal executive office and to the Grantee at the address that he or she most recently provided in writing to the Company.

(d) Section 83(b) Election. If Grantee makes an election pursuant to section 83(b) of the Code with respect to this Award, Grantee shall be required to promptly file a copy of such election with the Committee, file notice of the election with the Internal Revenue Service within thirty (30) days of the date of the grant and shall provide the required withholding to the Company pursuant to Section 4(a). Grantee is solely responsible for any filing and notification required pursuant to regulations issued under Section 83(b) of the Code.

(e) Choice of Law. This Agreement and the Grant Notice shall be governed by, and construed in accordance with, the laws of the State of Nevada, without regard to any conflicts of law or choice of law rule or principle that might otherwise cause the Plan, this Agreement or the Grant Notice to be governed by or construed in accordance with the substantive law of another jurisdiction.

(f) Arbitration. Any dispute or claim arising out of or relating to the Plan, this Agreement or the Grant Notice shall be settled by binding arbitration before a single arbitrator in Nevada and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall decide any issues submitted in accordance with the provisions and commercial purposes of the Plan, this Agreement and the Grant Notice, provided that all substantive questions of law shall be determined in accordance with the state and Federal laws applicable in the state in which the Company is incorporated, without regard to internal principles relating to conflict of laws.

(g) Modification or Amendment. This Agreement may only be modified or amended by written agreement executed by the parties hereto; provided, however, that the adjustments permitted pursuant to Section 4.3 of the Plan may be made without such written agreement.

(h) Severability. In the event any provision of this Agreement shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining provisions of this Agreement, and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been included.

(i) References to Plan. All references to the Plan shall be deemed references to the Plan as may be amended from time to time.

(j) Section 409A Compliance. To the extent applicable, it is intended that the Plan and this Agreement comply with the requirements of Code Section 409A and any related regulations or other guidance promulgated with respect to such Section by the U.S. Department of the Treasury or the Internal Revenue Service and the Plan and the Award Agreement shall be interpreted accordingly.

ECOARK HOLDINGS, INC.
2017 OMNIBUS INCENTIVE PLAN

Notice of Restricted Stock Unit Grant

You (the "Grantee") have been granted the following award of Restricted Stock Units (" Restricted Stock Units" or "RSUs") with respect to shares of Ecoark Holdings, Inc. (the "Company") common stock, par value \$0.001 per share (the "Shares"), pursuant to the Ecoark Holdings, Inc. 2017 Omnibus Incentive Plan (the "Plan").

Name of Grantee: [NAME]

Number of Restricted Stock Units Granted: [NUMBER]

Effective Date of Grant: [DATE]

Vesting and Period of Restriction: [VESTING SCHEDULE]

[IF PERFORMANCE-BASED, INSERT APPLICABLE PERFORMANCE CRITERIA]

By your signature and the signature of the Company's representative below, you and the Company agree and acknowledge that this grant of Restricted Stock Units is granted under and governed by the terms and conditions of the Plan and the attached Restricted Stock Unit Award Agreement, which are incorporated herein by reference, and that you have been provided with a copy of the Plan and Restricted Stock Unit Agreement.

Grantee:

Ecoark Holdings, Inc.

By: _____
 Name: [NAME]

By: _____
 Name: _____
 Title: _____

ECOARK HOLDINGS, INC.
2017 OMNIBUS INCENTIVE PLAN

Restricted Stock Unit Award Agreement

Section 1. Grant of Restricted Stock Unit

(a) **Restricted Stock Unit.** On the terms and conditions set forth in the Notice of Restricted Stock Unit Grant (the "Grant Notice") and this Restricted Stock Unit Award Agreement (this "Agreement"), the Company grants to the Grantee on the Effective Date of Grant the right to receive the number of Restricted Stock Units set forth in the Grant Notice. Each RSU represents the right to receive one Share or payment in cash of an amount equal to the Fair Market Value of such Share (or a combination thereof) to be issued and delivered at the end of the Period of Restriction, subject to the risk of forfeiture described herein.

(b) **Plan and Defined Terms.** The RSUs are granted pursuant to the Plan. All terms, provisions, and conditions applicable to the RSUs set forth in the Plan and not set forth herein are hereby incorporated by reference herein. To the extent any provision hereof is inconsistent with a provision of the Plan, the provisions of the Plan will govern. All capitalized terms that are used in the Grant Notice or this Agreement and not otherwise defined therein or herein shall have the meanings ascribed to them in the Plan.

Section 2. Forfeiture and Transfer Restrictions

(a) **Forfeiture Restrictions.** If the Grantee's employment or service as a Director or Consultant, as the case may be, is terminated for any reason other than (i) death, (ii) Disability (as defined below) or (iii) termination by the Company and its Subsidiaries upon a Change in Control, the Grantee shall, for no consideration, forfeit to the Company the RSUs to the extent such RSUs are subject to a Period of Restriction at the time of such termination. If the Grantee's employment or service as a Director or Consultant, as the case may be, terminates due to the Grantee's death or Disability, or is terminated by the Company and its Subsidiaries upon a Change in Control while RSUs are subject to a Period of Restriction, the Period of Restriction with respect to such RSUs shall lapse, and the RSUs shall vest and become free of the forfeiture and transfer restrictions described in this Section 2, on the date of the Grantee's termination of employment or service.

The term "Disability" shall have the meaning ascribed to such term in the Grantee's employment agreement with the Company or any Subsidiary. If the Grantee's employment agreement does not define the term "Disability," or if the Grantee has not entered into an employment agreement with the Company or any Subsidiary, the term "Disability" shall mean the Grantee's entitlement to long-term disability benefits pursuant to the long-term disability plan maintained by the Company or in which the Company's employees participate.

(b) **Transfer Restrictions.** During the Period of Restriction, the RSUs may not be sold, assigned, pledged, exchanged, hypothecated or otherwise transferred, encumbered or disposed of to the extent such RSUs are subject to a Period of Restriction.

(c) **Lapse of Restrictions.** The Period of Restriction shall lapse as to the RSUs in accordance with the Grant Notice. The Committee, in its sole discretion, may pay vested RSUs by delivery of Shares or by payment in cash of an amount equal to the Fair Market Value of such Shares (or a combination thereof). As soon as practicable after the end of the Period of Restriction (but in no event later than 75 days thereafter), the number of Shares of the vested RSUs (minus any withholding for taxes) shall be paid to the Grantee (subject, however, to any deferral application that the Grantee has made under the deferral plan (if any) then available to the Grantee). The number of Shares that shall be paid (plus withholding for taxes and any applicable deferral amount) shall equal the number of vested RSUs. If the Grantee dies before any payment due hereunder is made, such payment shall be made to the Grantee's beneficiary. If Shares are issued, they shall be registered in the Grantee's name in certificate or book entry form as soon as practicable following delivery of the Shares. Once a payment has been made with respect to a RSU, the RSU shall be canceled.

Section 3. Miscellaneous Provisions

(a) **Tax Withholding.** Pursuant to Article 20 of the Plan, the Company shall have the power and right to deduct or withhold, or require the Grantee to remit to the Company, an amount sufficient to satisfy any federal, state and local taxes (including the Grantee's FICA obligations) required by law to be withheld with respect to this Award. The Committee may condition the payment of vested RSUs upon the Grantee's satisfaction of such withholding obligations. The Grantee may elect to satisfy all or part of such withholding requirement by tendering previously-owned Shares or by having the Company withhold Shares or cash having a Fair Market Value equal to the minimum statutory withholding (based on minimum statutory withholding rates for federal, state and local tax purposes, as applicable, including payroll taxes) that could be imposed on the transaction, and, to the extent the Committee so permits, amounts in excess of the minimum statutory withholding to the extent it would not result in additional accounting expense. Such election shall be irrevocable, made in writing, signed by the Grantee, and shall be subject to any restrictions or limitations that the Committee, in its sole discretion, deems appropriate.

(b) **Rights as Stockholder.** Neither Grantee nor any person claiming under or through Grantee shall have any of the rights or privileges of a stockholder of the Company in respect of any Shares issuable hereunder unless and until certificates representing such Shares (which may be in uncertificated form) have been issued and recorded on the books and records of the Company or its transfer agents or registrars, and delivered to Grantee (including through electronic delivery to a brokerage account). After such issuance, recordation and delivery, Grantee shall have all the rights of a stockholder of the Company, including with respect to the right to vote the Shares and the right to receive any cash or share dividends or other distributions paid to or made with respect to the Shares.

(c) **Ratification of Actions.** By accepting this Agreement, the Grantee and each person claiming under or through the Grantee shall be conclusively deemed to have indicated the Grantee's acceptance and ratification of, and consent to, any action taken under the Plan or this Agreement and Grant Notice by the Company, the Board, or the Committee.

(d) **Notice.** Any notice required by the terms of this Agreement shall be given in writing and shall be deemed effective upon personal delivery or upon deposit with the United States Postal Service, by registered or certified mail, with postage and fees prepaid. Notice shall be addressed to the Company at its principal executive office and to the Grantee at the address that he or she most recently provided in writing to the Company.

(e) **Choice of Law.** This Agreement and the Grant Notice shall be governed by, and construed in accordance with, the laws of the State of Nevada, without regard to any conflicts of law or choice of law rule or principle that might otherwise cause the Plan, this Agreement or the Grant Notice to be governed by or construed in accordance with the substantive law of another jurisdiction.

(f) **Arbitration.** Any dispute or claim arising out of or relating to the Plan, this Agreement or the Grant Notice shall be settled by binding arbitration before a single arbitrator in Nevada and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall decide any issues submitted in accordance with the provisions and commercial purposes of the Plan, this Agreement and the Grant Notice, provided that all substantive questions of law shall be determined in accordance with the state and federal laws applicable in the state in which the Company is incorporated, without regard to internal principles relating to conflict of laws.

(g) **Modification or Amendment.** This Agreement may only be modified or amended by written agreement executed by the parties hereto; provided, however, that the adjustments permitted pursuant to Section 4.3 of the Plan may be made without such written agreement.

(h) **Severability.** In the event any provision of this Agreement shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining provisions of this Agreement, and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been included.

(i) **References to Plan.** All references to the Plan shall be deemed references to the Plan as may be amended from time to time.

(j) **Section 409A Compliance.** To the extent applicable, it is intended that the Plan and this Agreement comply with the requirements of Code Section 409A and any related regulations or other guidance promulgated with respect to such Section by the U.S. Department of the Treasury or the Internal Revenue Service and the Plan and the Award Agreement shall be interpreted accordingly.