



End User License Agreement for HYPACK Software

This End User License Agreement (“EULA”) is a legal agreement between you (the “Customer”), either an individual or a single entity, and PureHM U.S. Inc., a subsidiary of Xylem Inc. and/or its affiliates as applicable (“Grantor”), for the HYPACK software that accompanies this EULA, which may include associated media and Internet-based services. “Software” shall refer to the HYPACK® program, and/or the DREDGEPACK® program, and/or the HYSWEEP® program, and all other material on the enclosed on CD ROM, storage device, or downloaded, including any or all of source code, object code, or any other executable code contained therein and any updates or plug-ins made accessible to the Customer by Grantor.

For further clarity, “Dongle” refers to the external portable device used to authenticate the Software; “Use” shall consist of either loading the software into computer memory or running it in a Central Processing Unit; “Install” means to copy the software to a hard disk drive or similar storage device.

YOU, THE CUSTOMER, AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS EULA BY INSTALLING, COPYING, OR USING THE SOFTWARE. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU ARE NOT PERMITTED TO INSTALL, COPY, OR USE THE SOFTWARE. YOU MAY NOT MODIFY THIS EULA BY MAKING ANY TYPED, HANDWRITTEN, OR ANY OTHER CHANGES TO IT FOR ANY PURPOSE.

1. **LICENSE GRANT:** The Customer does not receive any ownership right, title, or interest, nor any security or other interest, in any copyright, patent, trade secret or other intellectual property rights relating to the Software or in any copy of any part of the Software, or in any trademark or service mark used by Grantor in relation thereto, except as expressly provided for herein. The Customer is granted a non-transferable, nonexclusive license to Use the Software subject to the restrictions and terms set forth in this EULA. The Customer may install the Software on any number of computers that are used exclusively by the Customer. The Customer may Use the Software only with the hardware lock(s), Dongle, provided by Grantor. All rights not expressly granted to you by this EULA are hereby reserved by Grantor.
2. **RESTRICTIONS:** The Software may not be reproduced, sold, rented, loaned, leased, or sublicensed by the Customer without the express written consent of Grantor. The Customer may not copy the Software or accompanying documentation except as specifically permitted in this EULA. The Customer may not remove or alter any proprietary notices, labels, or marks, including any Grantor trademarks or copyright notices, on the Software or accompanying documentation. The Customer may not modify, translate, reverse engineer, translate, disassemble, or decompile the Software or accompanying documentation, or allow any third party to modify, reverse engineer, disassemble, or decompile the Software or accompanying documentation. The license hereby provided does not convey to the Customer a right to user support, notifications regarding known bugs, modifications, updates, enhancements, fixes or patches.
3. **REPLACEMENT OF HARDWARE LOCK(S) (“Dongle”):** Customer assumes full responsibility for the care and use of the Dongle provided by Grantor. Dongles provided are specific to each Software License and are required to operate Software.
 - a. Grantor shall replace the Dongle in the event the Dongle is damaged or fails to operate. Customer shall be charged a replacement fee, plus shipping and handling costs and Customer shall return the defective Dongle to Grantor. Grantor shall ship a replacement Dongle to Customer, within three (3) days of completion of the requisite inspection.
 - b. GRANTOR accepts no responsibility for lost or stolen Dongles. Customer is solely responsible for safeguarding the Dongle from loss or theft. The cost to replace a Dongle is the full price of a Software License, plus shipping and handling costs. A new Dongle will be shipped to Customer upon receipt of payment to Grantor.
4. **TERMINATION AND TRANSFER:** The license is effective until terminated by Customer or Grantor by written notice. Any failure by the Customer to comply with the terms and conditions of this EULA will result in automatic termination of this license. Upon termination of this EULA for any reason, the Customer must cease all use of the Software, must uninstall all copies of the Software installed under this license, must return to Grantor any Dongle provided for use with the Software, and must destroy or return to Grantor all copies of the Software and accompanying documentation. The Customer shall not transfer the Software or any Dongle provided for use with the Software or the Software license to anyone, except in connection with a company name change, acquisition or merger, including the transfer of substantially all of the Customers’ assets to a single purchaser. All representations, warranties, and limitations of liability contained in this EULA shall survive the termination of this EULA; any other obligations of the parties hereunder shall also survive, if they relate to the period before termination or if, by their terms, they would be expected to survive such termination.
5. **COMMUNICATION OF LICENSE AGREEMENT:** The Customer agrees to communicate the terms and restrictions contained in this EULA to all persons under the Customer’s employment, direction, or control, and to all users of the Customer’s computers on which the Software is installed.
6. **UNAUTHORIZED USE AND COMPLIANCE:** The Customer will use all reasonable efforts to see that employees, agents, assigns, or other persons under the direction or control of the Customer abide by the terms and conditions of this EULA. The Customer agrees to promptly notify Grantor in writing of any unauthorized use.
7. **GENERAL PROVISIONS AND LIMITED WARRANTY:** Grantor warrants that for thirty (30) days after purchase of the Software package by the Customer, the Software will reasonably conform to the standards defined in the accompanying documentation (manuals and computer-aided instructions). Grantor specifically does not warrant that the Software will operate uninterrupted or error-free. The sole and exclusive remedy for a failure of the Software to perform in accordance with the accompanying documentation is for the Customer to notify Grantor in writing of the nonperformance within thirty (30) days of purchase and to return the Software to Grantor. Grantor’s sole obligation, in the event of a warranty claim by the Customer, shall be to provide the Customer with a performing copy of the Software within a reasonable time after receiving the requisite notification of nonperformance.



8. **DISCLAIMER OF OTHER WARRANTIES:** TO THE EXTENT PERMITTED BY LAW, THE LIMITED WARRANTY SET FORTH IN PARAGRAPH SEVEN IS IN LIEU OF ANY OTHER WARRANTIES, INCLUDING EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, CONDITIONS OR TERMS OF WHATEVER NATURE RELATING TO THE SOFTWARE PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. THIS DISCLAIMER ALSO INCLUDES, BUT NOT LIMITED TO, WARRANTIES PROVIDED BY DISTRIBUTORS AND RETAILERS OF THE SOFTWARE
9. **THIRD PARTY DATA:** The Software may incorporate and use add-ons from third party sources including but not limited to the National Oceanic Atmospheric Administration (collectively "Data"). The Data is provided to you "AS IS." Grantor makes no warranties, express or implied, regarding the accuracy of any Data. Grantor is not obligated to provide you with any new enhanced, updated or additional data. For more information on National Oceanic Atmospheric Administration's Vertical Datum Transformation visit <http://vdatum.noaa.gov/>
10. **SOFTWARE UPDATES/UPGRADES:** At Grantor's sole discretion, Grantor may provide the Customer with updates/upgrades to the Software. Grantor retains the right to provide the updates/upgrades for a fee to be determined at the time updates/upgrades are provided to Customer. The Customer may refuse to purchase the updates/upgrades. The terms and conditions of this EULA apply to any and all updates/upgrades unless they provided under different terms.
11. **CUSTOMER RESPONSIBILITY FOR SELECTION OF THE SOFTWARE:** The Customer is solely responsible for selection of the Software to achieve the Customer's intended results or for particular applications.
12. **LIMITATION OF LIABILITY AND INDEMNIFICATION: UNLESS MANDATED BY APPLICABLE LAW, IN NO EVENT SHALL GRANTOR BE LIABLE IN LAW OR EQUITY TO A CUSTOMER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM THE USE OF THE SOFTWARE OR ACCOMPANYING DOCUMENTATION, HOWEVER CAUSED, AND REGARDLESS OF THE THEORY ON WHICH A CLAIM FOR SUCH DAMAGES IS BASED, WHETHER UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY THEORY OF LIABILITY. GRANTOR'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER TO GRANTOR FOR THE PREVIOUS THREE (3) YEARS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THIS LIMITATION WILL APPLY EVEN IF GRANTOR OR AN AUTHORIZED DEALER HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES. CUSTOMER ACKNOWLEDGES THAT THE LICENSE FEE REFLECTS THIS ALLOCATION OF RISK.** Customer agrees to indemnify, defend and hold harmless Grantor and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorney fees) arising out of Customer's use of the Software or breach of this EULA.
13. **SEVERABILITY:** If any provision of this EULA is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions.
14. **U.S. GOVERNMENT RESTRICTED RIGHTS:** This Software is subject to all applicable export laws in accordance with the U.S. Export Administration Regulations. You may not use or otherwise export or re-export the Software except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. In particular, but without limitation, the Software may not be exported or re-exported (a) into any U.S.-embargoed countries or (b) to anyone on the U.S. Treasury Department's Specially Designated Nationals List or the U.S. Department of Commerce Denied Persons List or Entity List. By using the Software, Customer represents and warrants that it is not located in any such country or on any such list. Customer also agrees that it will not use the Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture, or production of nuclear, missile, or chemical or biological weapons. If applicable to the transaction, this Software and accompanying documentation are provided to the U.S. Government with restricted rights. Use, duplication, or disclosure by the government is subject to restrictions set forth in the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in the Commercial Computer Software -- Restricted Rights clause at FAR 52.227-19.
15. **MAINTENANCE AND CUSTOMER SUPPORT:** Upon acceptance of this EULA, Grantor will provide new Customers with an initial one (1) year subscription to the HYPACK Software Maintenance Plan ("Plan") at no charge. After expiration of the initial one (1) year Plan subscription, the Plan is renewed on an annual basis upon Customer's payment of the renewal fee to Grantor. The terms and conditions of this EULA will apply to this Plan and any Plan renewal unless the Plan is provided under different terms. Grantor is solely responsible for providing the maintenance and support services for the Software under the Plan. Plan specifics are available at: www.hypack.com/maintenance-plan. Customer may contact HYPACK, a division of Grantor at: **Address: 56 Bradley St. Middletown, CT 06457, USA - Phone number: +1.860.635.1500 - Email: help@hypack.com**
16. **ENTIRE AGREEMENT:** All Software licensed to Customer is governed by the Standard Terms and Conditions of Sale – Americas ("STCS"), which are in effect on the date the order is accepted, which terms are available at <http://www.xylem.com/en-us/Pages/terms-conditions-of-sale.aspx> and incorporated herein by reference and made a part of the agreement between the Customer and Grantor. This EULA and the STCS constitute the entire agreement between Grantor and the Customer. In the event of a conflict between the STCS and this EULA, the EULA will prevail. No prior or contemporaneous representations, inducements, promises, or agreements, oral or otherwise, between the parties with reference thereto shall be of any force or effect. No modification or amendment to the license agreement shall be valid or binding unless reduced to writing and duly executed by the party or parties to be bound thereby.