

TERMS AND CONDITIONS FOR SERVICES – XYLEM AMERICAS

(V1 - Effective 11.10.2017)

1. Applicability.

(a) These terms and conditions for services - Xylem Americas (these “**Terms**”) along with any special conditions expressly incorporated in the quotation or sales form, will govern any sale of services by **Service Provider to Customer**. The Parties may also be referred to individually as “**Party**” and collectively as “**Parties**.”

(b) These Terms, collectively with any applicable Statement(s) of Work, (the “**Agreement**”) comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. If the Parties have entered into a Master Services Agreement (a “**MSA**”), the Order shall be governed by the terms of such MSA. In case of discrepancy between the Agreement documents, they shall be applied in the following order: (i) the MSA (if any); (ii) these Terms.

(c) These Terms prevail over any of Customer’s general terms and conditions regardless of whether Customer has submitted its request for proposal, or order on such terms and Service Provider expressly rejects such Customer general terms and conditions. Provision of Services to Customer does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms.

2. Services. Service Provider shall provide the Services to Customer as described in the Statement of Work (the “**Services**”) in accordance with these Terms.

3. Performance Dates. Service Provider shall use reasonable efforts to meet any performance dates specified in the Statement of Work, and any such dates shall be estimates only.

4. Customer’s Obligations.

Customer shall:

(a) cooperate with Service Provider in all matters relating to the Services and provide such access to Customer’s premises, and such office accommodation and other facilities as may reasonably be requested by Service Provider, for the purposes of performing the Services;

(b) deliver to Service Provider all relevant environmental, health and safety information before conducting the Services and at all relevant times thereafter, including mitigating hazards to the maximum extent practicable and/or warning of any such hazards along with requirements for appropriate personal protective equipment, as required to establish and maintain safe working conditions;

(c) respond promptly to any Service Provider request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Service Provider to perform Services in accordance with the requirements of this Agreement;

(d) provide such customer materials or information as Service Provider may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and

(e) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

5. Customer’s Acts or Omissions.

If Service Provider’s performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, Service Provider shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay (“**Customer Delay**”).

6. Change Orders.

(a) A Change Order may result only from any of the following: (i) a change in scope or other proposal by Customer or Service Provider agreed to by other Party in writing; (ii) a material change in site conditions discovered as a latent condition during performance of the Services or otherwise not previously known or disclosed (iii) the occurrence of a force majeure event as described in Section 18; (iv) a change in law, rule or regulation that impacts Service Provider’s work; (v) a Customer Delay as provided in Section 5.

(b) In the event(s) or circumstance(s) giving rise to a Change Order above, the Party seeking the Change Order shall prepare a detailed proposal for such Change Order. Service Provider shall, within a reasonable time after such detailed proposal is submitted, provide a written estimate to Customer of: (i) the likely time required to implement the change; (ii) any necessary variations to the fees and other charges for the

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Services arising from the change; (iii) the likely effect of the change on the Services; and (iv) any other impact the change might have on the performance of this Agreement.

Promptly after receipt of the detailed proposal, the Parties shall negotiate and agree in writing on the terms of such change (a “**Change Order**”). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with Section 26. Notwithstanding the foregoing, in the event(s) or circumstance(s) giving rise to a Change Order under Section 6(a)(ii), 6(a)(iii), 6(a)(iv), or 6(a)(v) above, Service Provider shall be entitled to an equitable adjustment in compensation (including mobilization and demobilization costs) and the time for performance of the Services. If the Parties cannot agree on the terms of such change and Service Provider is unable to complete performance of the Services, then Service Provider may elect to terminate the Agreement and Customer shall be responsible for payment for the Services provided to the date of termination, including costs for work in progress and demobilization, and without further obligation or liability to Customer.

(c) Notwithstanding Section 6(a) and Section 6(b) above, Service Provider may, from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Statement of Work.

(d) Service Provider may charge for the time it spends assessing and documenting a change request from Customer on a time and materials basis in accordance with the Statement of Work.

7. Quotation, Withdrawal, Expiration. Quotes are valid for thirty (30) calendar days from the date of issuance unless otherwise provided therein. Service Provider reserves the right to cancel or withdraw the quotation at any time with or without notice or cause prior to acceptance by Customer. There is no Agreement if any conditions specified within the quotation or sales form are not completed by Customer to Service Provider’s satisfaction within thirty (30) calendar days of Service Provider’s acknowledgement in writing of an order. Service Provider nevertheless reserves its right to accept any contractual documents received from Customer after this thirty (30) calendar day period

8. Fees and Expenses; Payment Terms; Interest on Late Payments.

(a) In consideration of the provision of the Services by the Service Provider and the rights granted to Customer under this Agreement, Customer shall pay the fees set forth in the Statement of Work.

(b) Customer agrees to reimburse Service Provider for all reasonable travel and out-of-pocket expenses incurred by Service Provider in connection with the performance of the Services.

(c) Payment in full is due within thirty (30) days from the invoice date unless otherwise stated in Service Provider’s documentation. In the event payment is not made when due, to the extent permitted under law, Customer agrees to pay Service Provider a service or finance charge of the lesser of (i) one and one-half percent (1.5%) per month (18% per annum), or (ii) the highest rate permitted by applicable law, on the unpaid balance of the invoice from and after the invoice due date.

Customer is responsible for all costs and expenses associated with any checks returned due to insufficient funds or costs and expenses incurred from Service Provider’s collection efforts. All credit sales are subject to prior approval of Service Provider’s credit department. (iii) Further, in the event payment is not made when due, Service Provider may suspend performance for all Services until payment has been made in full.

9. Taxes. Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder.

10. Intellectual Property. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, “**Intellectual Property Rights**”) in and to all documents, work product and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of the Service Provider in the course of performing the Services, including any items identified as such in the Statement of Work (collectively, the “**Deliverables**”) except for any Confidential Information of Customer or customer materials, shall be owned by Service Provider. Service Provider hereby grants Customer a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicenseable, fully paid-up, royalty-free and perpetual basis to the extent necessary

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to enable Customer to make reasonable use of the Deliverables and the Services.

11. Confidential Information.

(a) All non-public, confidential or proprietary information of the Parties, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, “**Confidential Information**”), disclosed by Service Provider to Customer and Customer to Service Provider, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential,” in connection with the provision of the Services and this Agreement is confidential, and shall not be disclosed or copied without the prior written consent of the disclosing Party. Confidential Information does not include information that is: (i) in the public domain; (ii) known to Customer at the time of disclosure; or (iii) rightfully obtained by Customer on a non-confidential basis from a third party.

(b) Customer agrees to use the Confidential Information only to make use of the Services and Deliverables.

(c) Service Provider shall be entitled to seek injunctive relief for any violation of this Section.

12. Representation and Warranty.

(a) For a period of ninety (90) days from the date of invoice, unless otherwise expressly set forth in the quotation or sales form or order acknowledgment, Service Provider represents and warrants to Customer that it shall perform the Services

using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement (“**Warranty**”).

(b) The Service Provider shall not be liable for a breach of the Warranty set forth in Section 12(a) unless Customer gives written notice of the defective Services, reasonably described, to Service Provider within thirty (30) days of the time when Customer discovers or reasonably should have discovered that the Services were defective.

(c) Subject to Section 12(b), Service Provider shall, in its sole discretion, either: (i) repair or re-perform such Services; or (ii) credit or refund the price of such Services at the pro rata contract rate.

(d) **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, CONDITIONS OR TERMS OF WHATEVER NATURE RELATING TO THE SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. EXCEPT AS OTHERWISE PROVIDED BY LAW, BUYER'S EXCLUSIVE REMEDY AND SERVICE PROVIDER'S AGGREGATE LIABILITY FOR BREACH OF THE FOREGOING WARRANTY**

IS LIMITED TO REMEDIES SET FORTH IN SECTION 12(c).

14. Limitation of Liability.

EXCEPT AS OTHERWISE PROVIDED BY LAW, IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THE APPLICABLE STATEMENT OF WORK GIVING RISE TO THE CLAIM. SERVICE PROVIDER SHALL HAVE NO LIABILITY TO CUSTOMER OR TO ANY THIRD PARTY FOR LOSS OF PROFIT, LOSS OF ANTICIPATED SAVINGS OR REVENUE, LOSS OF INCOME, LOSS OF BUSINESS, LOSS OF USE, LOSS OF OPPORTUNITY, LOSS OF DATA OR DIMINUTION IN VALUE, LOSS OF REPUTATION, OR FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOT WITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THE FOREGOING LIMITATIONS OF LIABILITY SHALL BE EFFECTIVE WITHOUT REGARD TO SERVICE PROVIDER'S ACTS OR OMISSIONS OR

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NEGLIGENCE OR STRICT LIABILITY IN PERFORMANCE OR NON-PERFORMANCE HEREUNDER.

15. Termination. In addition to any remedies that may be provided under this Agreement, Service Provider may terminate this Agreement with immediate effect upon written notice to Customer, if Customer:

- (a) fails to pay any amount when due under this Agreement and such failure continues for thirty (30) days after Customer's receipt of written notice of nonpayment;
- (b) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or
- (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

16. Insurance. During the term of this Agreement, Customer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a coverage amount no less than \$10,000,000.00 (Ten Million US Dollars), and Builders Risk when applicable, with financially sound and reputable insurers. Upon Service Provider's request, Customer shall provide Service Provider with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Service Provider as an additional insured, which shall remain in effect through completion of the Services and applicable warranty period(s). Customer shall also provide a renewal certificate

evidencing these requirements when the Service and/or warranty period extends past the Customer's then current coverage term. Customer shall provide Service Provider with ten (10) days' advance written notice in the event of a cancellation or material change in Customer's insurance policy. Except where prohibited by law, Customer shall require its insurer to waive all rights of subrogation against Service Provider's insurers and Service Provider.

17. Waiver. No waiver by Service Provider of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Service Provider. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18. Force Majeure. Service Provider may cancel or suspend this Agreement and Service Provider shall have no liability for any failure to deliver or perform, or for any delay in delivering or performing any obligations, due to circumstances beyond Service Provider's reasonable control, including but not limited to acts of God, fire, flood or other natural disasters, war and civil disturbance, riot, acts of governments, terrorism, disease, currency restrictions, labor shortages or disputes, unavailability of materials, fuel, power, energy or transportation facilities, failures of suppliers or subcontractors to effect deliveries, in which case the time for performance shall be extended in an amount equal to the excused period, provided that Service Provider shall

have, as soon as reasonably practicable after it has actual knowledge of the beginning of any excusable delay, notified Customer of such delay, of the reason therefore and of the probable duration and consequence thereof. Service Provider shall use its best efforts to eliminate the cause of the delay, interruption or cessation and to resume performance of its obligations hereunder with the least possible delay.

19. Assignment. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Service Provider. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

20. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other party in any manner whatsoever.

21. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

22. Governing Law. THE TERMS OF THIS AGREEMENT AND ALL RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE

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GOVERNED BY THE LAWS OF THE JURISDICTION WHERE SERVICE PROVIDER'S OFFICE IS LOCATED TO WHICH THIS ORDER HAS BEEN SUBMITTED (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS). THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

23. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the Parties at the addresses set forth in the Statement of Work or to such other address that may be designated by the receiving Party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

24. Severability. If any term or

provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

25. Survival. Provisions of these Terms, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidentiality, Governing Law, Insurance, Submission to Jurisdiction/Arbitration and Survival.

26. Amendment and Modification. This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each Party.

27. Exports Regulations. Service Provider agrees to comply with all applicable laws, rules and regulations, including relating to the export or re-export of technical data and services. Service Provider will, at its reasonable expense, provide Customer with information, documentation, and electronic transaction records relating to the

Services performed necessary for Customer to fulfill any customs-related obligations, origin marking or labeling requirements and certification or local content reporting requirements, or to enable Customer to claim preferential duty treatment for products eligible under applicable trade preference regimes.

28. Successors and Assigns. The Order and these Terms are binding upon the Parties and their successors and assigns. If either the Customer or Service Provider is merged with another entity, the legal successor of the merged Party shall automatically become party to this contract and shall have the same rights and obligations as its predecessor under this contract. Service Provider agrees and warrants that it shall provide Customer notice as soon as reasonably practicable upon knowledge of any material change of control in Service Provider's business or if Service Provider ceases or threatens to cease trading, but in no case shall notice be provided more than forty-eight (48) hours after a change in control has occurred.

29. Headings. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of these Standard Terms.