Software License Agreement

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3. **Access to Software.** You shall ensure that only your employees and your independent contractors who need access to the Software for you to obtain the benefits of this Agreement may access it. You are responsible for ensuring that your employees and independent contractors abide by the terms of this Agreement.

4. **Third Party Software.** This Software may include Open Source Software. Use of the Open Source Software is governed by the terms and conditions of the Open Source Licenses. Upon request, Xylem will provide you with a copy of the source code for such Open Source Software in accordance with the terms of the relevant software license.

5. **Effect of Termination.** Upon the termination of the Software License, all your rights to use the Software shall immediately cease and you shall promptly remove and return all copies of the Software and any related documentation and shall instruct all its employees that further use of the Software is prohibited.

6. **Intellectual Property.** Xylem and/or its supplier (as applicable) shall own all right, title, and interest in and to the Intellectual Property associated with the Software and related documentation, including any derivations and/or derivative works. Nothing in this Software License Agreement transfers ownership in any Intellectual Property rights in the Software. To the extent, if any, that any ownership interest in and to such Intellectual Property does not automatically vest in Xylem by virtue of this Agreement or otherwise, and instead vests in you, you agree to grant and assign and hereby grants and assigns to Xylem all right, title, and interest that you may have in and to such Intellectual Property in the Software.

7. **UCITA**. To the maximum extent permitted by law, the Parties agree that the Uniform Computer Information Transaction Act as enacted by any state shall not apply, in whole or in part, to this Agreement.

8. **Reliability of Data.** Model configurations, projections and the analysis generated by Software is provided "as is", without any warranty as to accuracy or validity, is intended for planning and decision support purposes only, and is subject to uncertainties that cannot be fully identified or qualified. Forecasts and actual results may materially vary due to events and circumstances that are not reasonably foreseeable, inaccurate or incomplete data provided and used to formulate the projections, or operation and system conditions that are beyond the scope or capability of Software. Xylem is not responsible for the realization of forecasted conclusions or projections, or identification of matters that might affect actual system operation or conditions as a result of your use of the Software.

9. **Use with Third-Party Products**. If you use the Software together with third-party products, such use is at your risk. You are responsible for complying with any third-party provider terms and conditions. Xylem does not provide support or guarantee ongoing integration support for products that are not a native part of Xylem products or services except as otherwise provided in writing between Xylem and you.

10. **Warranty**. Xylem warrants that the Software will perform substantially in accordance with the accompanying written documentation for a period of 90 days from the date the Software is received. This warranty shall not apply where the Software (a) has been altered, except by Xylem or its authorized representative; (b) has been subjected to abnormal physical conditions, accident or negligence, or installation or use inconsistent with this Software License Agreement or Xylem's documentation; (c) is acquired on a no charge, beta or evaluation basis; (d) is not a Xylem-branded product or service; or (e) has not been provided by Xylem or a source approved by Xylem. Xylem's sole liability under this limited warranty will be, at Xylem's option, either (a) the return of the purchase price paid for the Software or (b) repair or replacement of the Software. Where Xylem provides a refund of the purchase price paid for the Software, you must return or destroy all copies of the Software. Except as expressly stated in this Section, to the extent allowed by applicable law, Xylem expressly disclaims all warranties and conditions of any kind, express or implied, including without limitation any warranty, condition or other implied term as to merchantability, fitness for a particular purpose or noninfringement, or that the Software will be secure, uninterrupted or error free.

11. **Export**. Xylem's Software, products, technology and services (collectively the "Xylem Products") may be subject to U.S. and local export control and sanctions laws. You acknowledge and agree to the applicability of and your compliance with those laws, and you will not receive, use, transfer, export or re-export any Xylem Products in a way that would cause Xylem to violate those laws. You also agree to obtain any required licenses or authorizations.

12. **Order of Precedence**. If there is any conflict between this Software License Agreement and any other agreement relating to the purchase of the Software, the order of precedence is: (a) any other agreement relating to the purchase of the Software; (b) this Software License Agreement (excluding the terms of any other agreement relating to the purchase of the Software), then (c) any applicable Xylem policy expressly referenced in this Software License Agreement.

13. **Limitation of Liability.** Xylem's aggregate liability in any and all causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively "Causes of Action") shall not exceed the total amount paid by you to Xylem under this Agreement. This is so whether the Causes of Action are in tort, including without limitation, negligence or strict liability, in contract, under statute or otherwise. As a separate and independent limitations on liability, Xylem's liability shall be limited to direct damages. Xylem shall not be liability for: (i) any indirect, incidental, special, or consequential damages; nor (ii) any revenue or profits lost by you or your affiliates from any end user(s), irrespective of whether such lost revenue or profits is categorized as direct damages or otherwise; nor (iii) any In/Out Costs. The limitations on liability set forth in this Agreement are fundamental inducements to Xylem entering into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give Xylem the maximum protection permitted under law. To the maximum extent permitted by law, no Cause of Action may be instituted by you against Xylem more than 12 months after the Cause of Action first arose. In the calculation of any damages in any Cause of Action, no damages incurred more than 12 months prior to the filing of the Cause of Action shall be recoverable.

14. **Termination.** Either party may terminate this Agreement earlier if the other party commits a material breach of the Agreement and such material breach is not cured within 45 days of written notice by the other party. Upon any expiration or termination of this Agreement, Xylem and your obligations hereunder shall cease and the Software License shall cease immediately.

15. **Third-Party Beneficiaries.** This Software License Agreement does not grant any right or cause of action to any third party.

16. **Survival.** Sections 2, 5, 6, 8, 9, 10, 13, 15 and 18 survive termination or expiration of this Software License Agreement.

17. **Amendments**. This agreement may not be amended unless in writing signed by Xylem.

18. **Entire Agreement.** This written Agreement represents the entire agreement between the parties concerning the use of the Software. There are no other terms or conditions, oral, written, electronic or otherwise concerning the use of the Software.

19. **Severability.** In the event any provision of this Agreement is held to be void, unlawful or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified will continue to be in full force and effect.

20. **Non-Waiver.** Failure or delay byXylem to exercise a right or power under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of a right or power preclude any other future exercise thereof.

21. **Definitions**.

     a.   "**End User**" means any operator of water or wastewater equipment   at the Service Location.

     b.   "**In/Out Costs**" means any costs and expenses incurred by you in transporting goods between its warehouse and its End User's premises and any costs and expenses incurred by you in installing, uninstalling and removing goods.

     c.   "**Intellectual Property**" means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, maskwork rights, moral rights, authors's rights, and other intellectual property rights, including any deviations and/or derivative works, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.

     d.   "**Fees**" means the one time purchase price, or the annual fees, as applicable, to be paid by you during the Term. The Fees are as described in the proposal or other documentation provided to you by Xylem or its authorized distributor relating to the Software and/or any hardware that has the Software embedded therein.

     e.   "**Open Source Software**" means software that is "open source" or "copyleft" as those terms are commonly understood in the software industry, including any software that is: (i) distributed pursuant to a license or other agreement that requires licensees to disclose or otherwise make available the source code for any software incorporating or using such licensed software or developed using such licensed software, or to distribute or make available such software on terms specified in such license or agreement; (ii) subject to the GNU General Public

License (GPL) or the GNU Lesser General Public License (LGPL), the GNU Affero GPL, the MIT license, the Eclipse Public License, the Common Public License, the CDDL, the Mozilla Public License, the Academic Free License, the BSD license, or the Apache license (in each case, any version thereof) or any license approved by, or substantially similar to any license approved by, the Open Source Initiative (as of the date hereof set forth at http://opensource.org/licenses/index.html), or any reciprocal license; or (iii) listed in the Free Software Directory maintained by the Free Software Foundation (in cooperation with the United Nations Education, Scientific and Cultural Organization (UNESCO)) (as of the date hereof set forth at http://directory.fsf.org/).

f.   "**Patches**" means patches or other maintenance releases of the Software that correct processing errors and other faults and defects found in previous versions of the Software. For clarity, Patches are not Updates.

g.   "**Permitted Use**" means only for monitoring, analyzing, and controlling water and wastewater processing equipment in your Service Location.

h.   "Proposal" means the project specific proposal generated for you.

i.   "**Service Location**" means the location specified in the project specific Proposal.

j.   "**Software**" means the software listed in Exhibit A under the heading "Xylem Software List" and any Patches, Updates, and Upgrades that are provided to you pursuant to the terms of this Agreement.

k.   "**Updates**" means releases of the Software that constitute a minor improvement in functionality.

Exhibit A

Xylem Software List

Xylem Edge Control, Pulsed Aeration

Xylem Edge Control, Ammonia Removal

Xylem Edge Control, Ammonia + Nitrogen Removal

Xylem Edge Control, Phosphorus Removal

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