

## **AqWiFi Mobile Application End User License Agreement**

This End User License Agreement (“EULA”) is a contract between you and Fluid Handling, LLC, a subsidiary of Xylem Inc. and/or its Xylem Affiliates as applicable (“Xylem”) and applies to your use of the AqWiFi Pump Monitoring mobile application, which may be used in connection with the Xylem AqWiFi Pump Monitor. By using the AqWiFi Pump Monitoring mobile application (“Software”), you agree that you have read, agree with and accept all of the terms and conditions in this EULA, as well as our AqWiFi Pump Monitor End-User Agreement available here <http://www.goulds.com/aqwifi> and our Privacy Statement (“AqWiFi Pump Monitor Privacy Statement”) which is available here <http://www.goulds.com/aqwifi> both of which are incorporated in this EULA by this reference. You may not modify this EULA by making any typed, handwritten, or any other changes to it for any purpose.

You acknowledge and agree that this EULA is between you and Xylem, not with any third party (including, but not limited to, Apple®, Google®, or any mobile carrier), and that Xylem is solely responsible for the Software.

### **Scope of License**

The license granted to you for this Software by Xylem is a non-transferable, non-exclusive license to use the Software on a device that you own or control, and as permitted by the usage rules set forth for your particular device (for example, the Apple App Store Terms of Use). All rights not expressly granted to you by this EULA are hereby reserved by Xylem.

### **Eligibility**

You must be a resident of the United States of America or Canada and be 18 years or older to use the Software. You agree that you may only use the Software to access your AqWiFi Pump Monitoring account.

### **Restricted Use**

You may not rent, lease, lend, sell, redistribute, sublicense, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Software. Any attempt to do so is a violation of the rights of Xylem and its licensors. If you breach this restriction, you may be subject to prosecution and damages. The use of this Software for various purposes should not replace appropriate user judgment who will have the best understanding of the context in which the application is being used.

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### **Disclaimer of Warranties; Limitation of Liability**

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SOFTWARE IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE IS PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND XYLEM HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE SOFTWARE, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. XYLEM DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SOFTWARE, THAT THE FUNCTIONS CONTAINED IN, OR SERVICES PERFORMED OR PROVIDED BY, THE SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY XYLEM OR ITS AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE SOFTWARE PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION.

If you are using the Software on an Apple iOS device, in the event of any failure of the Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Software to you, but to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Xylem's sole responsibility.

In no event shall Xylem's total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty dollars (\$50.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

### **Indemnification**

You agree to indemnify, defend and hold harmless Xylem and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorney fees) arising out of the use of the Software or the breach of this EULA or any of the applicable AqWiFi Pump Monitor policies by you or any other user.

## **Product Claims**

You acknowledge and agree that Xylem, and not Apple (if you downloaded the Software to an Apple iOS device) or Google (if you downloaded the Software to a device with the Android operating system), is responsible for addressing any claims of you or any third party relating to the Software or your possession and/or use of that Software, including, but not limited to: (i) product liability claims; (ii) any claim that the Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

## **Legal Compliance**

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, you represent and warrant that you are not located in any such country or on any such list. You also agree that you 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.

## **Privacy**

Please see our AqWiFi Pump Monitor Privacy Statement, available at <http://www.goulds.com/acwifi> for more information on how the data we collect from you and how we use and share that data.

## **Termination**

The license is effective until terminated by you or Xylem. Your rights under this license will terminate automatically without notice from Xylem if you fail to comply with any term(s) of this EULA or the AqWiFi Pump Monitor End-User Agreement. Upon termination of the license, you shall cease all use of the Software and destroy all copies, full or partial, of the Software.

All representations, warranties, indemnifications, 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.

## **Third Party Terms and Beneficiaries**

You must comply with all applicable third party terms of agreement when using the Software. If you are using the Software on an Apple iOS device, you agree that Apple, and Apple's subsidiaries, are third party beneficiaries of this agreement and upon your acceptance of the terms and conditions of this agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this agreement against you as a third party beneficiary thereof.

## **Miscellaneous**

You agree that we may provide you with notice pursuant to the AqWiFi Pump Monitor End-User Agreement. You agree that your rights and obligations under this EULA are not assignable. We may freely assign our rights and obligations under this EULA with or without notice to you. This EULA shall bind and inure to the benefit of the parties and their successors and permitted assigns. Both parties are acting as independent contractors with respect to the activities hereunder.

This EULA and any other documents incorporated by reference constitute the entire agreement and understanding between the parties with respect to the subject matter of this EULA, and they replace any and all prior written or verbal agreements. If any portion of this EULA is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions shall remain in full force and effect. If Xylem fails to insist upon or enforce strict performance of any provision of this EULA, it shall not thereby waive any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this EULA. The language of this EULA shall be construed as a whole, according to its fair meaning and intent, and not strictly for or against either party, regardless of who drafted or was principally responsible for drafting this or any specific term or conditions hereof.

## **Dispute Resolution**

The terms of this section entitled “Dispute Resolution” will apply to all disputes that may arise out of, are connected with or relate to this EULA or this Software, subject only to the following two exceptions: (1) if Xylem reasonably believes that you have in any manner acted or failed to act in any manner that may cause harm to Xylem or any third party, Xylem may seek injunctive or other appropriate relief in any court of competent jurisdiction; or (2) any dispute may, at the option of the claiming party, be resolved in small claims court in New York County, New York, provided that all claims by all parties in the dispute fall within the jurisdiction of the small claims court but subject to the informal resolution below. Furthermore, in no event will the terms of this section limit Xylem’s ability to investigate complaints or reported violations of this EULA or to take any action Xylem deems necessary and appropriate to mitigate actions against Xylem, including reporting any suspected unlawful activity to law enforcement officials, regulators, or other third parties.

***Informal Resolution.*** If you have any dispute with us or any related third party, arising out of, relating to, or connected with the Software, you agree to contact us; provide a brief, written description of the dispute and your contact information (including your username, if your dispute relates to an account); and give the Xylem thirty (30) days within which to resolve the dispute to your satisfaction. If Xylem does not resolve the dispute through good faith negotiations under this informal process, you may pursue the dispute in accordance with the arbitration agreement below.

***Arbitration Agreement.*** Any claims by Xylem, or claims by you that are not resolved by the informal resolution procedure as provided above, arising out of, relating to, or connected with this EULA or this Software, must be asserted individually in binding arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules and Supplementary Procedures for Consumer-Related Disputes (including utilizing desk, phone or video conference proceedings where appropriate and permitted to mitigate costs of travel). This agreement and each of its

parts evidence a transaction involving interstate commerce, and the Federal Arbitration Act (9 USC §1, et. seq.) will apply in all cases and govern the interpretation and enforcement of the arbitration rules and arbitration proceedings. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. In addition to and notwithstanding the terms stated above, the following will apply to your disputes: (1) the arbitrator, and not any federal, state, or local court or agency, will have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this EULA including any claim that all or any part of this EULA is void or voidable; (2) the arbitrator will not have the power to conduct any form of class or collective arbitration nor join or consolidate claims by or for individuals; and (3) you hereby irrevocably waive any right you may have to a court trial (other than small claims court as provided below) or to serve as a representative, as a private attorney general, or in any other representative capacity, or to participate as a member of a class of claimants, in any lawsuit, arbitration or other proceeding against us or related third parties arising out of, relating to, or connected with this EULA.

### **Maintenance and Support**

Please contact us at the information below for customer support. Xylem is solely responsible for providing maintenance and support services for the Software. Third party operating system providers such as Apple and Google have no obligation to provide maintenance or support services for the Software.

If you have questions, complaints or claims with respect to the Software, you can contact Xylem at:  
Xylem.

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