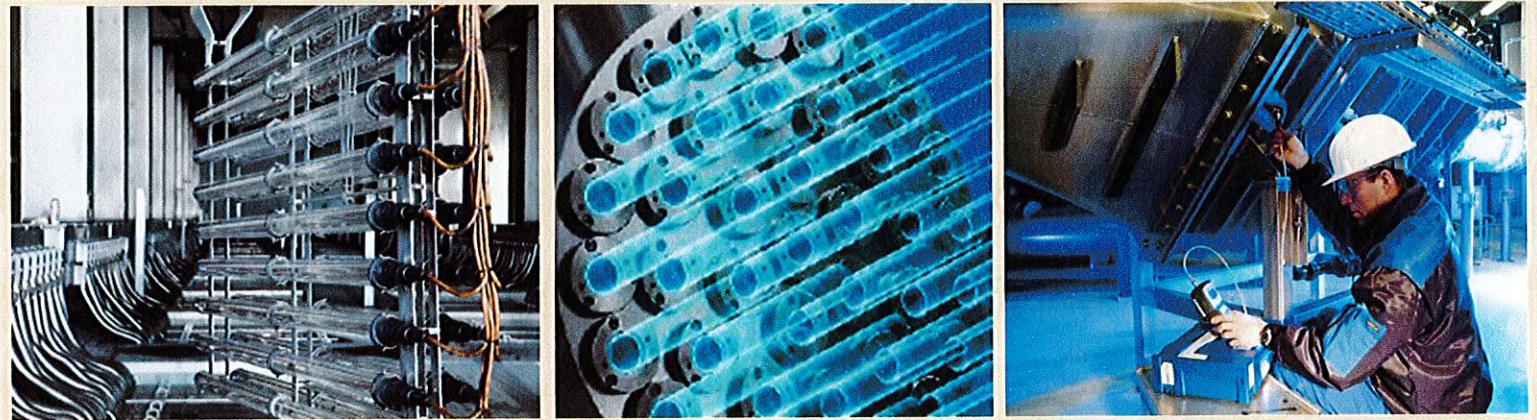


# WEDECO

a xylem brand

## TotalCare Services Proposal

Improving Performance, Reducing Costs



**WEDECO Spektron-e 250 Vessel (3X)**

**Webb County Water Utilities**

**Rio Bravo, TX**

QUOTE NO. 2017-WED-0540

**Wedeco Project #: U15010**

**Wedeco Contact: Robert Voitle**

**Date of Contract Proposal: May 09, 2017**

WEDECO – Xylem Water Solutions  
14125 South Bridge Circle, Charlotte, NC 28273  
Tel: (704) 409 – 9700 Fax: (704) 295 – 9080  
[www.wedeco.com/us](http://www.wedeco.com/us)

### **WEDECO TotalCare Services**

WEDECO TotalCare Services will enable you to reduce the total cost of ownership by providing technical and process support. Our TotalCare services work because we are committed to supporting you and your UV system throughout its operational life; ensuring that you achieve the lowest cost of equipment ownership through increased reliability, reduced energy consumption and proactive maintenance.

### **Keeping maintenance costs down**

With resources tight and cost-cutting measures in place across the board, companies are looking for smart ways to extend asset life and reduce costs for unplanned work, such as breakdowns and emergency callouts.

**TotalCare Preventative Maintenance (PM) Services** are the most economical, and also the most popular of all TotalCare services. With the Preventative Maintenance service, a Xylem technician will visit your site every six (6) months for three (3) years. Each visit will be one (1) full day. Additional days can be purchased at a price of \$1739.00 per day if required.

### **Introduction**

Due to the ever tightening demands on effluent quality discharge limits, and the large penalties that are imposed should these limits be breached, it is vital that a regular and effective maintenance regime be employed. This ensures a high standard of operation and maintains plant integrity.

A preventive maintenance service program is proposed that is completely tailored to your needs. Yearly, semi-annual or quarterly planned visit by a WEDECO Field Service Technician specifically trained in the maintenance of the WEDECO UV Disinfection System will be carried out utilizing a well-defined service schedule.

WEDECO systems are required to perform 24/7. To guarantee this performance level, regular inspection and maintenance combined with the use of genuine OEM spare parts is essential. Key benefits that you can expect from a WEDECO TotalCare preventive maintenance service program include:

- Plant optimization with focus on reducing plant operational costs
- Start up and winterization services
- Priority in service scheduling
- Custom tailored preventative maintenance plans
- Unlimited phone support
- Discounts on spare parts
- Discounts on multiple year purchases
- Additional on-site training
- Knowledgeable factory trained UV service technicians
- Cleaning of equipment
- Confirm instrument calibration and set-up
- Reduce system down time

## Details of Maintenance Performed During Visit

**Confirm key elements of UV system are operating correctly.**

### **Visual Inspection**

Site records, trended data, parameter settings

Recording of Operational Status

Baffle Plates

UV Vessels – level of Quartz sleeve fouling, Electrical cables, Intensity sensor, Ballast Cards

Valve control

### **Cleaning of Parts**

Baffle Plates

UV vessel interior surfaces

UV Lamp Quartz Sleeves

Ballast Cabinet Filters

### **Replacement of Parts**

Lamps, Quartz sleeves

Intensity Sensor

Intensity Sensor Port Window

TMO- UVT Monitor

Ballast Cards

Ballast Interface Boards

### **Confirm Instrument Calibration / Set-up**

Software & PLC Output

TMO / UVT Monitor

Intensity Sensors

Level and Flow Ultrasonic Sensors

Signal Isolators

### **Functional / Operational Tests**

Software & PLC

UV Lamps and Ballasts

Operates correctly in Manual / Automatic Mode

Valves in Manual / Automatic

All Safety Circuits

### **Documentation**

O & M Manual Updates to include:

PLC Logic (where applicable)

Equipment drawings (where applicable)

Electrical drawings (where applicable)

Mechanical drawings (where applicable)

Recommended Parts Spares List (where applicable)



## Maintenance Contracts with Extended Warranty

### Preventative Maintenance Package

Our TotalCare preventative maintenance will be offered for a full three (3) years. Included with this three year service contract will be a full system extended warranty. A full replacement of lamps will also be included and installed once a lamp replacement is necessary (approx. 12,000 hours of use). In order for Xylem to offer the full system warranty, new Spektron e 250 vessels shall be successfully started up by Wedeco technicians and signed off to the owner. The owner shall continue to perform the daily maintenance activities for the UV system (Spektron e 250) for the extended warranty to remain valid. Any active alarms present on the HMI screen shall be reported to the Wedeco service department.

Contracts are invoiced 100% at time of contract and in advance of service. Pricing for preventative maintenance services is as follows:

<b>TotalCare Preventative Maintenance Service Level – 3 Year Service</b>	
Each visit will be <b>one (1)</b> full day(s) on site. Visits shall be completed every six months. Preventative maintenance services will be offered for a period of three full years.	
Full system warranty will be offered for the duration of the preventative maintenance services.	
Full set of replacement lamps will be included as part of the full system warranty.	
Parts ordered during the term of this agreement are subject to 12% discount	
	<b>\$55,694</b>

For questions regarding this preventative maintenance proposal, please contact one of the following:

Robert Voitle  
 Customer Care Specialist - WEDECO  
 Office: 704-887-9125  
 Cell: 980-240-6059  
 Email: [robert.voitle@xylem.com](mailto:robert.voitle@xylem.com)

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions unless the context otherwise requires, the following words have the following meanings:

"**Contract**" means (i) a specific contract entered into between the Parties for the supply of Maintenance Services by the Purchaser from Supplier; (ii) a purchase order submitted by the Purchaser In Writing and accepted In Writing by Supplier, or (iii) a tender submitted by Supplier In Writing and accepted In Writing by the Purchaser; including any appendices to such contract, purchase order or tender;

"**Gross Negligence**" means an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious supplier would normally foresee as likely to ensue;

"**Purchaser**" means the person, firm or company who purchases the Maintenance Services from Supplier;

"**Goods**" means the plant, machinery, equipment and accessories in relation thereto sold or hired to Purchaser by Supplier, as specified in Supplier's quotation or tender and/or acceptance of Purchaser's order for the provision of Maintenance Services in respect thereof (as applicable), and located at Purchaser's specified site address;

"**Maintenance Services**" means the type of services in connection with the servicing of the Goods that Supplier agrees to supply to Purchaser pursuant to these Conditions, as specified in Supplier's quotation or Schedule A hereto;

"**In Writing**" means by document signed by the Parties or by letter, fax, electronic mail and by such other means as are agreed by the Parties.

"**Parties**" means Purchaser and Supplier;

"**Supplier**" means Xylem Water Solutions entity set forth in the Contract;

"**Working Day**" means any day of the week except Saturdays, Sundays and public holidays.

1.2 In addition to the aforesaid, certain words and expressions may be defined in the clauses in which they appear for the first time.

1.3 Headings in these Conditions are inserted only for convenience and shall not affect the construction of these Conditions.

1.4 Where appropriate, words denoting the singular number shall include the plural and vice versa.

1.5 Reference to any statute or statutory provision includes a reference to the statute or statutory provision as from time to time amended, extended or re-enacted;

1.6 Reference to any "**person**" shall include an individual, firm, unincorporated association or body corporate.

## 2. APPLICATION OF CONDITIONS

2.1 Subject to any variation under Clause 2.3, the Contract shall be governed by these Conditions to the exclusion of all other express terms and conditions (including, without limitation, any terms or conditions which Purchaser purports to apply under any order, acceptance of quotation or tender from Supplier or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in Purchaser's order, acceptance of quotation or tender from Supplier or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to the supply of Maintenance Services in respect of any Goods and any variation to these Conditions shall have no effect unless expressly agreed In Writing by a director or other authorized representative of Supplier.

2.4 These Conditions (as varied in accordance with Clause 2.3) together with the matters referred to in Supplier's quotation or tender and/or acceptance of Purchaser's order for the Maintenance Services embody the entire agreement between the Parties and supersede any prior statements, promises, representations and undertakings in respect of the subject matter thereof and Purchaser acknowledges that it has not relied on any statement, promise, representation or undertaking made or given by or on behalf of Supplier which is not expressly set out in the Contract, except for any representation made fraudulently.

2.5 Each order for Maintenance Services or acceptance of a quotation or tender from Supplier for the supply of Maintenance Services, by Purchaser shall be deemed to be an offer by Purchaser to purchase such Maintenance Services subject to these Conditions. Purchaser shall

ensure that any such order or acceptance of a quotation or tender from Supplier is In Writing and the terms thereof are complete and accurate, as Supplier is only responsible under the Contract for supplying such Maintenance Services as are specified therein in respect of such Goods as are specified therein.

2.6 No order placed with Supplier by Purchaser shall be deemed to be accepted by Supplier until Supplier issues a written acceptance thereof.

### 3. VALIDITY

3.1 Supplier's tenders are valid for thirty (30) calendar days from the date of issuance unless otherwise agreed In Writing by Supplier. Supplier reserves the right to cancel or withdraw the quotation at any time with or without notice or cause prior to acceptance In Writing by Purchaser. There is no Contract if any conditions specified within the tender or sales form are not completed by Purchaser to Supplier's satisfaction within thirty (30) calendar days of Supplier's acknowledgement In Writing of an order. Supplier nevertheless reserves its right to accept any contractual documents received from Purchaser after this 30-day period.

### 4. MAINTENANCE SERVICES

4.1 Under the Contract, Supplier agrees to provide the Purchaser with the Maintenance Services. The Maintenance Service to be provided by Supplier will be carried out by fully skilled and competent service engineers.

### 5. EXCLUSIONS FROM MAINTENANCE SERVICES

5.1 The Maintenance Services will not extend to:

- 5.1.1 Work carried out as a result of misuse, neglect, willful damage, vandalism or blockages;
  - 5.1.2 Modifications or additions to the Goods as detailed in Supplier's quotation and/or acceptance of the Purchaser's order for the Maintenance Services (as applicable);
  - 5.1.3 Pipe work, pump guide rails, upper guide rail brackets, lifting chains, air release valves, penstocks, sump covers and telemetry;
  - 5.1.4 Buildings, fixtures and fittings, ground work and civil engineering;
  - 5.1.5 Sump maintenance and cleaning;
  - 5.1.6 Crainage, or any lifting device;
  - 5.1.7 Service visits out of Purchaser's specified site address;
  - 5.1.8 The repair or replacement of parts which Supplier is required to carry out away from the Purchaser's site but which Purchaser, for security reasons or otherwise, is unwilling to release to Supplier;
  - 5.1.9 Any services requested by Purchaser which are in addition to the Maintenance Services, unless otherwise agreed In Writing by both Parties;
  - 5.1.10 If the Maintenance Services includes corrective repair, visits to site where no fault is found or the electricity supply has failed;
  - 5.1.11 Visits to site where access is prevented by the Purchaser or others, where the sump is full or where the Goods cannot be serviced for other reasons beyond the reasonable control of Supplier or where the site is unsafe;
  - 5.1.12 Sump clearing, de-sludging, jetting or the clear up of any overspill, over-pumping or other pollution incident arising out of any failure of the Goods; and
  - 5.1.13 Out of normal working hours breakdown (normal working hours for the purposes of this Clause 5.1.13 being 08.00hrs – 17.00hrs on any Working Day).
  - 5.1.14 Premium attendance requests, defined as 'same day' requests for attendance; or
  - 5.1.15 Items normally covered under the Maintenance Service which have become obsolete and for which replacement parts are no longer available.
  - 5.1.16 Any other exclusion(s) as defined in Schedule B hereto.
- 5.2 An additional charge will be levied for any services referred to in Clause 5.1 at Supplier's standard rate(s) applicable at the time of supply of such services, unless covered by some other contractual arrangement.

**6. MAINTENANCE CHARGES**

6.1 The charges for Supplier providing Purchaser with the Maintenance Services are detailed in the Supplier's quotation. Supplier shall be entitled to revise any such charges to cover any increase in the cost of providing the Maintenance Services as a result of increased costs of labor and materials or any other reason beyond Supplier's reasonable control, provided that:

6.1.1 Any additional charges to Purchaser under this Clause 6.1 shall not exceed the increased cost of servicing the Goods incurred by Supplier; and

6.1.2 At least one month's notice has been given to Purchaser, In Writing, of such additional charges.

6.2 In addition to the charges referred to in Clause 6.1, Purchaser shall pay the full cost of any spare parts used and fitted by Supplier whilst providing the Maintenance Services and/or during any other maintenance visit made. This includes any emergency visit carried out by Supplier both within and outside of the hours specified in Clause 5.1.13.

6.3 Supplier may, if Purchaser fails to pay for any additional charge or for any spare parts used and fitted, by 4:00pm on the due date, terminate the Contract immediately and without notice or liability to Purchaser.

**7. PURCHASER'S OBLIGATIONS**

7.1 To facilitate the provision by Supplier of the Maintenance Services, Purchaser shall:

7.1.1 Keep and operate the Goods in a proper and prudent manner and ensure that only its competent trained officers, employees and representatives are allowed to operate the Goods;

7.1.2 Use the Goods in a suitable environment with proper power supplies and in accordance with the instructions and advice of the manufacturer and Supplier;

7.1.3 Not move the Goods or make any addition, modification or adjustment to it without Supplier's prior written consent;

7.1.4 Purchaser shall not without Supplier's consent, itself carry out or have others carry out the maintenance which under the Contract shall be carried out by Supplier. IF PURCHASER DOES SO, SUPPLIER'S RESPONSIBILITY FOR PREVIOUSLY PERFORMED MAINTENANCE SHALL CEASE, UNLESS THE RESULT OF THE MAINTENANCE IS NOT AFFECTED BY PURCHASER'S MEASURES.

7.1.5 Use only spare parts of the original brand for the duration of the maintenance agreement. VIOLATION OF THIS OBLIGATION, AT ANYTIME DURING THE TERM OF THIS CONTRACT MAY RESULT IN CANCELLATION OF THE CONTRACT, AND ALL OBLIGATIONS STATED HEREIN, IN ITS ENTIRETY AS WELL AS FORFEITURE BY PURCHASER OF ANY PAYMENTS PREVIOUSLY MADE.

7.1.6 Maintain and make available to Supplier records of the operation, maintenance and any malfunction of the Goods;

7.1.7 Provide at such times as Supplier requires and at no cost to Supplier; all documentation, software materials and services necessary for the maintenance and testing of the Goods, access to the Goods, use of Purchaser's work shop and repair facilities and the cooperation of Purchaser's officers, employees and representatives in diagnosing and overcoming any malfunction of the Goods;

7.1.8 Make available applicable equipment, components and/or devices UPON ARRIVAL of Supplier or its designated representative. Should it be necessary for Supplier or its designated representative to reschedule after arrival due to the equipment, component and/or devices not being available, THE RE-SCHEDULED CALL WILL BE PROVIDED AT AN ADDITIONAL CHARGE.

7.1.9 Provide Supplier with safe access to the Goods to be serviced pursuant to the Contract and to ensure that all statutory requirements in respect of health and safety are met and provide Supplier with written notification of all known hazards prior to Supplier's commencement of any work; and

7.1.10 Provide Supplier with any labor, materials and/or equipment Supplier may need. All such equipment provided must be in full working and serviceable order prior to Supplier's commencement of any work with such equipment and Supplier reserves the right to charge Purchaser for any additional works required to bring such equipment up to full working and serviceable order, unless otherwise agreed In Writing between the Parties. Labor supplied by Purchaser shall have the necessary knowledge and expertise for the work to be performed. Supplier has no obligation to ensure that this is the case and Supplier has no responsibility and cannot be held liable for work performed by labor provided by Purchaser. Any inspection by Supplier of any such labor, materials and/or equipment will be at Purchaser's additional cost.

**8. SUPPLIER'S OBLIGATIONS**

8.1 Supplier acknowledges that Purchaser shall retain sole responsibility for making decisions regarding the operation of the Goods.

# TotalCare Services Terms and Conditions

8.2 Supplier shall use reasonable skill and care in carrying out the Maintenance Services on the times set out in Schedule A, and use its reasonable endeavors to keep the Goods in efficient operating condition by doing so but shall not have any responsibility or liability (whether direct, indirect or consequential) for:

8.2.1 Any loss or damage of any kind whether resulting from negligence or otherwise arising directly or indirectly from any failure, stoppage or breakdown of the Goods, except if such loss or damage is caused by the willful default or Gross Negligence of Supplier; or

8.2.2 The operation, default servicing or repair of any non-standard parts fitted to any Goods by persons other than Supplier without its prior knowledge and prior written consent.

8.2.3 If Supplier fails to carry out the Maintenance Services at the agreed time and such delay is not attributable to Purchaser, Purchaser shall fix a reasonable final period, not shorter than one week, within which the Maintenance Services shall be performed. If Supplier fails to do so, Purchaser may carry out the maintenance itself or employ others to do so on Supplier's reasonable expense.

8.3 Unless otherwise agreed in Writing, Supplier shall be liable for repair work for a period of six months after the work was performed.

8.4 Supplier warrants that newly installed parts and/or components supplied and installed by Supplier hereunder, are free from defects in design, workmanship and material appearing within a period of 12 months from installation (except for those due to ordinary wear and tear, negligence or neglect, vandalism or blockages). UNLESS SPECIFICALLY STATED HEREIN, THE MAINTENANCE SERVICES DO NOT REPLACE REGULAR CONTROLS AND SAFETY CHECKS OF THE SYSTEM WHICH IS THE RESPONSIBILITY OF PURCHASER.

THE MAINTENANCE SERVICES PROVIDED HEREIN SPECIFICALLY EXCLUDE OPERATION-RELATED CLEANING ACTIVITIES TO BE PERFORMED ON A REGULAR BASIS IN COMPLIANCE WITH THE MANUFACTURERS' OPERATION AND MAINTENANCE INSTRUCTIONS WHICH IS THE RESPONSIBILITY OF PURCHASER.

8.4.1 If Supplier fails to correctly perform the Maintenance Services, or if there is a defect in a part or component which it has provided and installed under the Contract, Supplier shall, after receipt of a notice under Clause 10 or after it itself discovered the defect, without delay at its own cost and within reasonable time, remedy the defect by (i) re-performing the Maintenance Service or (ii) repairing or replacing the defective part or component.

8.5 Except as otherwise expressly provided in the Contract (including these Conditions), Purchaser shall not be entitled to any compensation for Supplier's delay or defects in parts and/or components provided and installed by Supplier, and all warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law. SUPPLIER MAKES NO IMPLIED WARRANTIES, NOR FOR MERCHANTABILITY OR FITNESS FOR PURPOSE.

8.6 Nothing in the Contract (including these Conditions) in any way excludes or limits either party's liability for death or personal injury resulting from that party's negligence or the negligence of its officers, employees or representatives, for Gross Negligence, fraudulent misrepresentation or concealment or for any other matter in relation to which liability cannot be excluded or limited by law.

8.7 SUBJECT TO CLAUSES 8.1-8.6 AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE CONDITIONS:

8.7.1 THE LIABILITY OF SUPPLIER, WITH RESPECT TO ANY AND ALL CLAIMS ARISING OUT OF THE PERFORMANCE OR NON PERFORMANCE OF OBLIGATIONS UNDER THE CONTRACT, SHALL NOT EXCEED THE AGGREGATE OF THE AMOUNT ACTUALLY RECEIVED FOR THE MAINTENANCE SERVICES RENDERED UNDER THIS CONTRACT (WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE);

8.7.2 THE LIABILITY OF SUPPLIER SHALL IN NO EVENT INCLUDE DAMAGES FOR LOSS OF PROFIT, BUSINESS, CONTRACT, GOODWILL, REVENUE, POWER, OR USE. COSTS OF CAPITAL, DOWNTIME COSTS, CLAIMS OF CUSTOMERS OF THE PURCHASER OR LOSS OF ANTICIPATED SAVINGS, INCREASED COSTS OF OPERATION OR FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGE, LOSS OF ANY NATURE WHATSOEVER (WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE); AND

8.7.3 No such claim shall be asserted against Supplier, unless the injury, loss or damage giving rise to the claim is sustained prior to the expiration of the respective periods of liability specified in the Contract and no claim, suit or action thereon shall be instituted or maintained unless it is filed in an arbitration forum consistent with Clause 15 within one (1) year after the date the cause of action accrues.

## 9. PAYMENT

9.1 For domestic sales, payments shall be made within 30 days of the date of the invoice in the currency stipulated in the Contract, unless otherwise agreed to by Supplier In Writing. For export sales, full payment in advance by wire transfer is required in the currency stipulated in



# TotalCare Services Terms and Conditions

the Contract unless otherwise agreed to by Supplier in Writing. Supplier reserves the right to require payment in advance and otherwise modify payment terms should Purchaser's credit standing not meet Supplier's acceptance.

9.2 If Purchaser fails to pay by the due date, Supplier is entitled to interest from the date when the payment became due.

## 10. NOTICE OF DEFECTS

10.1 Purchaser shall promptly notify Supplier In Writing of any defect, which appears in the Maintenance Services, or the parts and/or components supplied by Supplier hereunder. If Purchaser fails to give notice of a defect without undue delay, it forfeits its rights in respect of the defect, except where the defect is such that it should have been apparent to Supplier.

## 11. FORCE MAJEURE

11.1 Either party shall be entitled to suspend performance of its obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any circumstance beyond the control of either party such as pandemic, fire, earthquake, natural disaster, acts of God, war, extensive military mobilization, insurrection, requisition, seizure, embargo, acts of governments, strikes, lockouts, restrictions in the use of power and defects or delays in deliveries by sub-contractors ("Force Majeure").

11.2 The party claiming to be affected by Force Majeure shall notify the other party In Writing without delay on the intervention and on the cessation of such circumstance.

11.3 If Force Majeure prevents Purchaser from fulfilling its obligations, it shall compensate Supplier for expenses incurred in securing and protecting the Goods.

11.4 Regardless of what might otherwise follow from these Conditions, either party shall be entitled to terminate the Contract by notice In Writing to the other party if performance of the Contract is suspended under this Clause 14 for more than three (3) consecutive months. If Purchaser terminates the Contracts due to Force Majeure, Purchaser shall, unless otherwise agreed In Writing, reimburse Supplier for (i) all costs and expenses incurred by Supplier under the Contract up until and including the date of the termination and (ii) any additional costs and expenses incurred as a result of the termination.

## 12. COMMENCEMENT AND DURATION OF THE CONTRACT

12.1 The Contract will commence on such commencement date as is agreed In Writing between the Parties and shall continue until such time as it is terminated in accordance with its terms.

## 13. TERMINATION

13.1 Either party may at any time by written notice (in addition to any other rights and remedies it may have) terminate the Contract or suspend its performance of all or any of its obligations under the Contract immediately and without liability for compensation or damages on giving the other party one month's written notice by recorded delivery, but any such notice given by Purchaser shall be subject to prior payment of any outstanding sums owed to the Supplier under the Contract or any services performed or parts/components supplied that have not been invoiced to Purchaser which were provided prior to termination.

13.2 Supplier may at any time by written notice (in addition to any other rights or remedies it may have) terminate the Contract or suspend its performance of all or any of its obligations under it immediately and without liability for compensation or damages if:

13.2.1 Purchaser fails to pay any sum due to Supplier under the Contract by the due date for its payment;

13.2.2 Purchaser breaches any other term of the Contract and (if capable of remedy) does not remedy such breach within 7 days of being notified to do so by Supplier;

13.2.3 Purchaser becomes bankrupt;

13.2.4 Purchaser has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt;

13.2.5 Purchaser convenes a meeting of its creditors or suffers a petition to be presented or a meeting to be convened or other action to be taken with a view to its liquidation; or

13.2.6 A receiver or an administrative receiver is appointed of any of Purchaser's property.



# TotalCare Services

## Terms and Conditions

### 14. ASSIGNMENT

14.1 Supplier may assign the Contract or any part of it or sub-contract any of its obligations hereunder to any person, firm or company. Purchaser shall not be entitled to assign the Contract or any part of it without Supplier's prior written consent.

### 15. ARBITRATION

15.1 All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the American Arbitration Association by one or more arbitrators appointed in accordance with the said rules.

- 15.2 The arbitration procedure shall be held in Laredo, Webb County, Texas and shall be held in English unless the Parties agree to use another language.

### 16. SEVERABILITY

16.1 If any provision of the Contract is found by any court or other body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable, it shall to the extent of such illegality, invalidity or unenforceability be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

### 17. WAIVER

17.1 Failure or delay by Supplier in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

17.2 Any waiver by Supplier of any breach of or default under any provision of the Contract by Purchaser shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other provisions of the Contract.

### 18. NO PARTNERSHIP OR AGENCY

18.1 Nothing in the Contract is intended to or shall operate to create a partnership, joint venture or relationship of principal and agent or employer and employee between the parties.

### 19. NOTICES

19.1 Any notice or notification required or authorized to be given under the Contract by one party to the other shall be:

19.1.1 In Writing; and

19.1.2 Sent by overnight service or mailed by certified or registered mail.

19.2 Notice shall be deemed duly served when received and signed for by the receiving party. Alternatively, proof of service may be made by providing proof of delivery from overnight service or signed delivery receipt from the postal service.

19.3 If a notice or notification is received after 4:00pm on a Working Day or on a day that is not a Working Day, it is to be treated as having been received at 10:00am on the next following Working Day.

### 20. THIRD PARTY RIGHTS

20.1 A person who is not party to the Contract shall have no right under the Contracts (Rights of Third Parties) to enforce any provision of the Contract, except a person who is the permitted successor to or assignee of the Contract according to the provisions of Clause 14.

### 21. GOVERNING LAW AND JURISDICTION

- 21.1 The Contract shall be governed by the substantive law of the State of Texas.

### 22. CONFIDENTIALITY

22.1 The Parties agree that any information received from the other party in connection with the Contract that evidently or by its nature should reasonably be understood to be confidential, shall not be disclosed by the recipient to any third party without the prior written approval of the disclosing party, except to the extent (i) this is necessary for the receiving party to exercise rights and perform duties pursuant to the Contract, (ii) the information is available to the general public or later becomes publicly available other than through a breach of the Contract, (iii) the



# TotalCare Services Terms and Conditions

information is actually known to the receiving party on the date that such information is disclosed as evidenced by written records in existence prior to the date of the receipt, (iv) the information is subsequently lawfully obtained by the receiving party from a third party or third parties, or (v) the information is independently developed by the receiving party prior to the disclosure.

### 23. FAIR LABOR STANDARDS ACT

23.1 When applicable, Supplier certifies that Goods furnished hereunder have been or will be produced in compliance with the Fair Labor Standards Act, as amended, and regulations and orders of the United States Department of Labor issued there under. Supplier agrees that this statement may be considered as the written assurance contemplated by the October 26, 1949 amendment to said Act.

### 24. ENTIRE AGREEMENT

24.1 The Parties agree that this Contract is the complete and exclusive statement of agreement between the Parties relative to the subject matter. This Contract supersedes all proposals or prior agreements, written or oral, and all other communication between the Parties.

THE PARTIES ACKNOWLEDGE THAT EACH HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

This Agreement has been executed in two (2) counterparts, of which the parties have received one (1) each.

AGREED TO:

SUPPLIER BY	<u>Xylem Water Solutions, USA, Inc.</u>	Purchaser	<u>Webb County, TX</u>
NAME	<u>Tom Johnson</u>	NAME	_____
TITLE	<u>Aftermarket Sales Lead</u>	TITLE	_____
DATE	<u>6/15/2017</u>	DATE	_____

Total Contract Price (from Schedule A): \$55,694.00 AS QUOTED

Type of Service Contract Accepted: AS QUOTED

Authorized Signature: Tom Johnson

- With contract acceptance, Customer shall supply Purchase Order documentation with the following information included;
- Purchase Order Number
  - Bill to Address
  - Ship to Address
  - Payment Terms
  - Shipping Terms
  - Any tax exemption which may be applicable, including tax exemption certificates