

Xylok, LLC (“Xylok”)

End-User License Agreement

Last updated: July 24, 2018

Important - Please Read

This End-User License Agreement (“Agreement”) is a legal agreement between the licensee end user (either an individual or entity) (“End User”) and Xylok setting forth the terms and conditions governing the use and operation of Xylok’s proprietary computer software products (the “Software”) and the written technical specifications for the use and operation of the Software (the “Documentation”). Where the sense and context permit, references in this Agreement to the Software include the Documentation. By downloading, installing, or otherwise using the Software, and/or otherwise accepting this Agreement, End User agrees to be bound by the terms and conditions of this Agreement currently in effect and as updated by Xylok from time to time.

You should read the following terms and conditions carefully before using any Xylok product.

1. Definitions

1.1. “Fee(s)” means any License, Maintenance, professional services, consulting or other Fees agreed to by the parties as set forth in a Transaction Document.

1.2. “Transaction” and “Transaction Document” have the following meanings: “Transaction(s)” is a License transaction pursuant to which End User: i) accepts this Agreement as provided and ii) takes actual or constructive possession of the Software. A Transaction may take place by any lawful means, electronically or in writing, and may be confirmed by a) purchase orders, credit orders, commitment letters, license keys, amendments to this Agreement or other similar materials, signed or unsigned, (each a “Transaction Document(s)”), or b) by the conduct of the affected parties. A Transaction may be initiated and implemented by any entity that is directly or indirectly a party to it, including End User, Xylok, or authorized third party resellers of the Software. A Transaction Document may contain usage, business, legal, and other terms and conditions agreed to by the parties. The foregoing notwithstanding, each Transaction will require that: i) this Agreement be accepted by End User and ii) End User obtains actual or constructive possession of the Software. In the event of a conflict or inconsistency between the terms and conditions of this Agreement and those set forth in a Transaction Document, the terms and conditions of the Transaction Document will govern and control.

2. License

2.1. Subject to the terms and conditions of this Agreement, Xylok grants to End User a revocable, limited, non-exclusive, non-transferable license, without the right to sublicense, to permit End User to use Xylok Software.

2.2. End User shall not, and shall not permit any third party to: (i) use Xylok Software except to the extent permitted in Section 2.1; (ii) modify or create any derivative work of any part of Xylok Software; or (iii) market, sublicense, publish, distribute, reproduce, assign, transfer, rent, lease, or loan Xylok Software.

2.3. End User may make a reasonable number of copies of the Documentation solely to support End User's use of the Software as authorized under this agreement, provided that such copies shall include Xylok's copyright and any other proprietary notices that appear on the original copies. Any copies of the Documentation made by the End User are the exclusive property of Xylok.

2.4. Xylok reserves all rights to Xylok Software or Documentation not otherwise expressly granted in this section.

3. Copyright and Other Restrictions

3.1. Xylok Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Xylok Software is licensed, not sold. The Software contains copyrighted material, trade secrets and other proprietary material of Xylok. All right, title and interest in the Software remains at all times with Xylok.

3.2. Modification, reverse engineering, reverse compiling, or disassembly of the Software is expressly prohibited.

3.3. End User will not disclose, transfer or otherwise make available the Software, or the results of any benchmark or other tests of the Software, to any third party without the prior written consent of Xylok.

3.4. End User shall not remove any proprietary notices from the Software.

4. Additional Terms

4.1. Nothing contained in this Agreement is intended to prohibit or restrict the parties from mutually agreeing to enter into separate terms and conditions that i) modify or supplement the terms and conditions (including business and/or financial terms) of this Agreement or the

License granted to End User pursuant to this Agreement; or ii) create or modify the terms of a particular Transaction.

5. Maintenance

5.1. Maintenance and support (“Maintenance”) for the Software will be available in accordance with Xylok’s applicable Maintenance policies then in effect and shall commence on delivery of the Software. Provided End User is current on Maintenance Fees, End User will receive support and any Software updates, enhancements and/or improvements that are included or otherwise separately defined under the Maintenance policies and are not licensed by Xylok to its customers for a separate charge.

6. Export Controls

6.1. Xylok Software is subject to US export control laws. Xylok prohibits and export or re-export of Xylok Software products, services, or technical data to any destinations subject to US embargoes or trade sanctions, except in compliance with the US Export Administration Act and the related rules and regulations and similar non-US government restrictions, if applicable. End User agrees not to use or make available the Software to or on behalf of any person that is a citizen, national, or resident of, or that is controlled by the government of the countries with which the US may prohibit export transactions.

7. Limited Warranty

7.1. Xylok warrants that it has the right and authority to grant the License under this Agreement. Further, Xylok warrants that, to the best of its knowledge, the Software does not infringe the rights, including patent, copyright and trade secret rights, of any third party, nor was the Software unlawfully copied or misappropriated from any third party.

7.2. Xylok warrants that the Software, in its unmodified form as initially delivered or made available to End User, will perform substantially in accordance with the Documentation for a warranty period of ninety (90) days from the date the Software is delivered to End User. In the event the Software fails in a material respect to operate in accordance with the Documentation during the warranty period and Xylok is unable to correct the defect, Xylok’s sole and exclusive liability and End User’s sole and exclusive remedy shall be a refund of the License fee paid by End User for the Software. In the event a reported problem with the Software is End User’s fault, End User agrees to reimburse Xylok for its correction efforts in accordance with its then standard rates. The foregoing limited warranty will not apply if failure of the Software is the result of damage or misuse caused by End User.

7.3. Except for the limited warranty set forth above, the Software is provided “as-is”, without warranty of any kind, express or implied, including without limitation any implied warranty that

the software is free of defects, merchantable or fit for a particular purpose. No oral or written information or advice given by Xylok or any third party, including, without limitation, any Xylok distributors or resellers, shall create any warranty in addition to, or in any way increase the scope of, the limited warranty.

7.4. In no event will Xylok, its affiliates, resellers, distributors, or suppliers be liable for any indirect, special, incidental or consequential damages arising out of the use of or inability to use the Software, including, without limitation, damages for lost profits, loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses, even if advised of the possibility thereof.

8. Limitation of Liability

8.1. Nothing in this Agreement (including anything specified in this “Limitation of Liability” provision) shall attempt to exclude or limit liability that cannot be excluded or limited under applicable law.

8.2. To the full extent allowed by law, Xylok disclaims and excludes for itself and its suppliers any liability, whether based in contract, tort (including negligence and strict liability), or otherwise, for incidental, consequential, indirect, special, or punitive damages of any kind or for the loss of revenue or profits, loss of business, loss of information or data, or other loss arising out of or in connection with the sale, installation, maintenance, use, performance, failure, or interruption of the Software, even if Xylok or its suppliers has been advised of the possibility of such damages, and limits its liability to replacement, repair, or refund of the purchase price paid, at Xylok’s option. This disclaimer of liability for damages will not be affected if any remedy provided herein fails its essential purpose.

9. Severability

9.1. In the event any provision of this Agreement is found to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of any of the remaining provisions shall not in any way be affected or impaired and a valid, legal, and enforceable provision of similar intent and economic impact shall be substituted therefor.