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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
FORM 10-Q**

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the quarterly period ended September 30, 2016

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission file number: 1-35229

**Xylem Inc.**

*(Exact name of registrant as specified in its charter)*

**Indiana**

*(State or other jurisdiction of incorporation or organization)*

**45-2080495**

*(I.R.S. Employer Identification No.)*

**1 International Drive, Rye Brook, NY 10573**

*(Address of principal executive offices) (Zip code)*

**(914) 323-5700**

*(Registrant's telephone number, including area code)*

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of October 28, 2016, there were 179,394,836 outstanding shares of the registrant's common stock, par value \$0.01 per share.

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**Xylem Inc.**  
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**PART I**

**ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**XYLEM INC. AND SUBSIDIARIES**

**CONDENSED CONSOLIDATED INCOME STATEMENTS (Unaudited)**

(in millions, except per share data)

For the periods ended September 30,	Three Months		Nine Months	
	2016	2015	2016	2015
Revenue	\$ 897	\$ 902	\$ 2,676	\$ 2,659
Cost of revenue	540	551	1,621	1,645
Gross profit	357	351	1,055	1,014
Selling, general and administrative expenses	219	207	665	631
Research and development expenses	23	23	75	71
Restructuring charges	6	1	18	5
Operating income	109	120	297	307
Interest expense	16	13	50	41
Other non-operating income, net	2	—	3	—
Gain from sale of businesses	—	—	—	9
Income before taxes	95	107	250	275
Income tax expense	22	19	40	49
Net income	\$ 73	\$ 88	\$ 210	\$ 226
Earnings per share:				
Basic	\$ 0.41	\$ 0.48	\$ 1.17	\$ 1.25
Diluted	\$ 0.41	\$ 0.48	\$ 1.17	\$ 1.24
Weighted average number of shares:				
Basic	179.3	180.8	179.0	181.5
Diluted	180.3	181.6	179.8	182.3
Dividends declared per share	\$ 0.1549	\$ 0.1408	\$ 0.4647	\$ 0.4224

See accompanying notes to condensed consolidated financial statements.

**XYLEM INC. AND SUBSIDIARIES****CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (Unaudited)**

(in millions)

For the periods ended September 30,	Three Months		Nine Months	
	2016	2015	2016	2015
Net income	\$ 73	\$ 88	\$ 210	\$ 226
Other comprehensive (loss) income, before tax:				
Foreign currency translation adjustment	(8)	(39)	(25)	(142)
Foreign currency gain reclassified into net income	—	—	—	(8)
Net change in derivative hedge agreements:				
Unrealized losses	—	—	—	(5)
Amount of (gain) loss reclassified into net income	(1)	5	(2)	17
Net change in postretirement benefit plans:				
Amortization of net actuarial loss into net income	3	4	8	12
Other comprehensive loss, before tax	(6)	(30)	(19)	(126)
Income tax impact related to items of other comprehensive income	(3)	1	(2)	4
Other comprehensive loss, net of tax	(3)	(31)	(17)	(130)
Comprehensive income	<u>\$ 70</u>	<u>\$ 57</u>	<u>\$ 193</u>	<u>\$ 96</u>

See accompanying notes to condensed consolidated financial statements.

**XYLEM INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED BALANCE SHEETS (Unaudited)**  
(in millions, except per share amounts)

	September 30, 2016	December 31, 2015
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 659	\$ 680
Receivables, less allowances for discounts and doubtful accounts of \$29 and \$33 in 2016 and 2015, respectively	792	749
Inventories	488	433
Prepaid and other current assets	153	143
<b>Total current assets</b>	<b>2,092</b>	<b>2,005</b>
Property, plant and equipment, net	440	439
Goodwill	1,621	1,584
Other intangible assets, net	444	435
Other non-current assets	181	194
<b>Total assets</b>	<b>\$ 4,778</b>	<b>\$ 4,657</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 341	\$ 338
Accrued and other current liabilities	438	407
Short-term borrowings and current maturities of long-term debt	62	78
<b>Total current liabilities</b>	<b>841</b>	<b>823</b>
Long-term debt	1,148	1,196
Accrued postretirement benefits	335	335
Deferred income tax liabilities	114	118
Other non-current accrued liabilities	113	101
<b>Total liabilities</b>	<b>2,551</b>	<b>2,573</b>
Commitments and contingencies (Note 17)		
Stockholders' equity:		
Common Stock – par value \$0.01 per share:		
Authorized 750.0 shares, issued 191.3 shares and 190.2 shares in 2016 and 2015, respectively	2	2
Capital in excess of par value	1,871	1,834
Retained earnings	1,011	885
Treasury stock – at cost 11.9 shares and 11.8 shares in 2016 and 2015, respectively	(402)	(399)
Accumulated other comprehensive loss	(255)	(238)
<b>Total stockholders' equity</b>	<b>2,227</b>	<b>2,084</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 4,778</b>	<b>\$ 4,657</b>

See accompanying notes to condensed consolidated financial statements.

**XYLEM INC. AND SUBSIDIARIES****CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)**

(in millions)

<b>For the nine months ended September 30,</b>	<b>2016</b>	<b>2015</b>
<b>Operating Activities</b>		
Net income	\$ 210	\$ 226
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	61	69
Amortization	36	33
Share-based compensation	15	11
Restructuring charges	18	5
Gain from sale of businesses	—	(9)
Other, net	8	10
Payments for restructuring	(11)	(11)
Changes in assets and liabilities (net of acquisitions):		
Changes in receivables	(27)	(32)
Changes in inventories	(42)	(15)
Changes in accounts payable	14	6
Other, net	(8)	(33)
<b>Net Cash – Operating activities</b>	<b>274</b>	<b>260</b>
<b>Investing Activities</b>		
Capital expenditures	(90)	(78)
Acquisition of business, net of cash acquired	(70)	—
Proceeds from sale of businesses	—	1
Proceeds from the sale of property, plant and equipment	—	1
Other, net	5	2
<b>Net Cash – Investing activities</b>	<b>(155)</b>	<b>(74)</b>
<b>Financing Activities</b>		
Short-term debt issued	62	—
Short-term debt repaid	(80)	(3)
Long-term debt issued	540	—
Long-term debt repaid	(608)	—
Repurchase of common stock	(3)	(128)
Proceeds from exercise of employee stock options	22	14
Dividends paid	(84)	(77)
Other, net	1	—
<b>Net Cash – Financing activities</b>	<b>(150)</b>	<b>(194)</b>
<b>Effect of exchange rate changes on cash</b>	<b>10</b>	<b>(44)</b>
<b>Net change in cash and cash equivalents</b>	<b>(21)</b>	<b>(52)</b>
Cash and cash equivalents at beginning of year	680	663
<b>Cash and cash equivalents at end of period</b>	<b>\$ 659</b>	<b>\$ 611</b>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid during the period for:		
Interest	\$ 34	\$ 37
Income taxes (net of refunds received)	\$ 60	\$ 57

See accompanying notes to condensed consolidated financial statements.

**XYLEM INC. AND SUBSIDIARIES**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

**Note 1. Background and Basis of Presentation**

***Background***

Xylem Inc. ("Xylem" or the "Company") is a leading equipment and service provider for water and wastewater applications with a broad portfolio of products and services addressing the full cycle of water, from collection, distribution and use to the return of water to the environment. Xylem was incorporated in Indiana on May 4, 2011.

Xylem operates in two segments, Water Infrastructure and Applied Water. The Water Infrastructure segment focuses on the transportation, treatment and testing of water, offering a range of products including water and wastewater pumps, treatment and testing equipment, and controls and systems. The Applied Water segment serves many of the primary uses of water and focuses on the residential, commercial, industrial and agriculture markets. The Applied Water segment's major products include pumps, valves, heat exchangers, controls and dispensing equipment.

Except as otherwise indicated or unless the context otherwise requires, "Xylem," "we," "us," "our" and the "Company" refer to Xylem Inc. and its subsidiaries.

***Basis of Presentation***

The interim condensed consolidated financial statements reflect our financial position and results of operations in conformity with accounting principles generally accepted in the United States of America ("GAAP"). All intercompany transactions between our businesses have been eliminated.

The unaudited interim condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") and, in the opinion of management, reflect all adjustments (which include normal recurring adjustments) considered necessary for a fair presentation of the financial position and results of operations for the periods presented. Certain information and note disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such SEC rules. We believe that the disclosures made are adequate to make the information presented not misleading. We consistently applied the accounting policies described in our Annual Report on Form 10-K for the year ended December 31, 2015 ("2015 Annual Report") in preparing these unaudited condensed consolidated financial statements, with the exception of accounting standard updates described in Note 2. These condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and the notes thereto included in our 2015 Annual Report.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Estimates are revised as additional information becomes available. Estimates and assumptions are used for, but not limited to, postretirement obligations and assets, revenue recognition, income tax contingency accruals and valuation allowances, goodwill and indefinite lived intangible impairment testing and contingent liabilities. Actual results could differ from these estimates.

Our quarterly financial periods end on the Saturday closest to the last day of the calendar quarter, except for the fourth quarter which ends on December 31. For ease of presentation, the condensed consolidated financial statements included herein are described as ending on the last day of the calendar quarter.

**Note 2. Recently Issued Accounting Pronouncements**

***Pronouncements Not Yet Adopted***

In October 2016, the Financial Accounting Standards Board ("FASB") issued guidance amending the accounting for income taxes. Under current guidance the recognition of current and deferred income taxes for an intra-entity asset transfer is prohibited until the asset has been sold to an outside party. The amended guidance eliminates the prohibition against immediate recognition of current and deferred income tax amounts associated with intra-entity transfers of assets other than inventory. This guidance is effective for interim and annual periods beginning

after December 15, 2017 with early adoption permitted as of the beginning of an annual reporting period for which financial statements (interim or annual) have not been issued or made available for issuance. The requirements of the amended guidance should be applied on a modified retrospective basis through a cumulative-effect adjustment directly to retained earnings as of the beginning of the period of adoption. We are evaluating the impact of the guidance on our financial condition and results of operations.

In June 2016, the FASB issued guidance amending the accounting for the impairment of financial instruments, including trade receivables. Under current guidance, credit losses are recognized when the applicable losses are probable of occurring and this assessment is based on past events and current conditions. The amended guidance eliminates the "probable" threshold and requires an entity to use a broader range of information, including forecast information when estimating expected credit losses. Generally, this should result in a more timely recognition of credit losses. This guidance is effective for interim and annual periods beginning after December 15, 2019 with early adoption permitted for interim and annual periods beginning after December 15, 2018. The requirements of the amended guidance should be applied using a modified retrospective approach except for debt securities, which require a prospective transition approach. We are evaluating the impact of the guidance on our financial condition and results of operations.

In February 2016, the FASB issued guidance amending the accounting for leases. Specifically, the amended guidance requires all lessees to record a lease liability at lease inception, with a corresponding right of use asset, except for short-term leases. Lessor accounting is not fundamentally changed. This amended guidance is effective for interim and annual periods beginning after December 15, 2018 using a modified retrospective approach. Early adoption is permitted. We are evaluating the impact of the guidance on our financial condition and results of operations.

In July 2015, the FASB issued guidance regarding simplifying the measurement of inventory. Under prior guidance, inventory is measured at the lower of cost or market, where market is defined as replacement cost, with a ceiling of net realizable value and a floor of net realizable value less a normal profit margin. The amended guidance requires the measurement of inventory at the lower of cost and net realizable value. Net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. This guidance is effective prospectively for interim and annual periods beginning after December 15, 2016 and early application is permitted. We are evaluating the impact of the guidance on our financial condition and results of operations.

In May 2014, the FASB issued guidance on recognizing revenue from contracts with customers. The guidance outlines a single comprehensive model to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. The core principle of the model is that an entity recognizes revenue to portray the transfer of goods and services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The standard also expands disclosure requirements regarding revenue recognition. This guidance is effective for interim and annual reporting periods beginning after December 15, 2017 and may be applied retrospectively to each prior period presented or with the cumulative effect recognized as of the date of initial application. Early adoption is permitted for interim and annual reporting periods beginning after December 15, 2016. We are evaluating the impact of the guidance on our financial condition and results of operations.

#### ***Recently Adopted Pronouncements***

In March 2016, the FASB issued an update on accounting for share-based payments. The guidance simplifies several aspects of the accounting for employee share-based payment transactions, including the accounting for income taxes, forfeitures, and statutory tax withholding requirements, as well as classification of excess tax benefits in the Condensed Consolidated Statements of Cash Flows. This standard is effective for annual reporting periods beginning after December 15, 2016. The Company elected to early adopt this standard in the quarter ended June 30, 2016 retroactively to January 1, 2016. The impact of the early adoption resulted in the following:

- The Company recorded tax benefits of \$1 million and \$3 million within income tax expense for the three and nine months ended September 30, 2016, respectively, related to the excess tax benefit on share-based awards. Prior to adoption this amount would have been recorded as an increase of capital in excess of par value. This change could create volatility in the Company's effective tax rate.
- The Company no longer reflects the cash received from the excess tax benefit within cash flows from financing activities but instead now reflects this benefit within cash flows from operating activities in the



Condensed Consolidated Statements of Cash Flows. The Company elected to apply this change in presentation prospectively and thus prior periods have not been adjusted.

- The Company elected not to change its policy on accounting for forfeitures and continues to estimate the total number of awards for which the requisite service period will not be rendered.
- At this time, the Company has not changed its policy on statutory withholding requirements and will continue to allow the employee to withhold up to the Company's minimum statutory withholding requirements.
- The Company excluded the excess tax benefits from the assumed proceeds available to repurchase shares in the computation of our diluted earnings per share for the three and nine months ended September 30, 2016. This increased diluted weighted average common shares outstanding by less than 50,000 shares for each of the aforementioned periods.

In March 2016, the FASB amended the guidance regarding the use of the equity method to record certain investments. Under current guidance, if an investor increases its level of ownership interest in a company and consequently qualifies for the equity method, the investor must retroactively adjust its investment, results of operations and retained earnings to reflect balances that would have arisen if the equity method had been in effect during all previous periods that the investment was held. The amended guidance eliminates the need to retroactively adjust balances and instead allows for the prospective application of the equity method. This guidance is effective prospectively for interim and annual reporting periods beginning after December 15, 2016. We elected to early adopt this guidance effective the first quarter of 2016. The adoption of this guidance did not impact our financial condition or results of operations.

In March 2016, in response to inconsistency in practice, the FASB issued guidance regarding the ability to maintain hedge accounting for a derivative instruments when one party to the instrument has been replaced by a new party ("a novation"). The new guidance states that a novation does not preclude the continued application of hedge accounting to a derivative assuming all other hedge accounting criteria continue to be met. This guidance is effective using either a prospective or a modified retrospective approach, for interim and annual reporting periods beginning after December 15, 2016. We elected to early adopt this guidance on a prospective basis effective the first quarter of 2016. The adoption of this guidance did not impact our financial condition or results of operations.

In March 2016, the FASB issued guidance clarifying what steps need to be followed when evaluating if call or put options are not clearly and closely related to their debt hosts, and therefore must be accounted for as separate derivatives. The guidance prescribes a four step process to assess whether an event that triggers the ability to exercise a call or put option is clearly and closely related to the debt host. The four step decision sequence requires an entity to consider whether (1) the payoff is adjusted based on changes in an index; (2) the payoff is indexed to an underlying other than interest rates or credit risk; (3) the debt involves a substantial premium or discount; and (4) the call or put option is contingently exercisable. This guidance is effective using a modified retrospective approach, for interim and annual reporting periods beginning after December 15, 2016. We elected to early adopt this guidance effective the first quarter of 2016. The adoption of this guidance did not impact our financial condition or results of operations.

### **Note 3. Acquisitions and Divestitures**

On August 15, 2016, we entered into a Share Purchase Agreement to acquire all of the direct and indirect subsidiaries of Sensus Worldwide Limited (other than Sensus Industries) ("Sensus"), a global leader in smart meters, network technologies and advanced data analytics services for the water, gas and electric industries. The purchase price was agreed at \$1.7 billion, net of cash acquired. We completed the acquisition of Sensus on October 31, 2016 pursuant to the terms of the Share Purchase Agreement and an Amendment to the Share Purchase Agreement dated as of October 31, 2016. Sensus, headquartered in Raleigh, North Carolina, has approximately 3,300 employees across 28 locations on six continents.

On February 1, 2016, we acquired Tideland Signal Corporation ("Tideland"), a leading producer of analytics solutions in the coastal and ocean management sectors, for \$70 million. Tideland, a privately-owned company headquartered in Texas, has approximately 160 employees. Our condensed consolidated financial statements include Tideland's results of operations from February 1, 2016 within the Water Infrastructure segment.

There were no divestitures for the three months ended September 30, 2015. For the nine months ended September 30, 2015, we divested two businesses for \$1 million, which were not material, individually or in the aggregate, to our results of operations or financial position. The sales resulted in a gain of \$9 million, reflected in gain from sale of businesses in our Condensed Consolidated Income Statement.

#### Note 4. Restructuring Charges

From time to time, the Company will incur costs related to restructuring actions in order to optimize our cost base and more strategically position ourselves based on the economic environment and customer demand. During the three and nine months ended September 30, 2016, we recognized restructuring charges of \$6 million and \$18 million, respectively. We incurred these charges primarily in an effort to reposition our European and North American businesses to optimize our cost structure and improve our operational efficiency and effectiveness. The charges included the reduction of headcount and consolidation of facilities within our Applied Water and Water Infrastructure segments, as well as Corporate headcount reductions.

During the three and nine months ended September 30, 2015, we recognized restructuring charges of \$1 million and \$5 million, respectively. We incurred these charges primarily in an effort to reposition our European and North American businesses to optimize our cost structure and improve our operational efficiency and effectiveness. The charges included the reduction of headcount and consolidation of facilities within our Water Infrastructure segment.

The following table presents the components of restructuring expense.

(in millions)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
By component:				
Severance and other charges	\$ 6	\$ 1	\$ 18	\$ 6
Lease related charges	1	—	1	—
Reversal of restructuring accruals	(1)	—	(1)	(1)
Total restructuring charges	<u>\$ 6</u>	<u>\$ 1</u>	<u>\$ 18</u>	<u>\$ 5</u>
By segment:				
Water Infrastructure	\$ 5	\$ 1	\$ 12	\$ 5
Applied Water	1	—	4	—
Corporate and other	—	—	2	—

The following table displays a rollforward of the restructuring accruals, presented on our Condensed Consolidated Balance Sheets within accrued and other current liabilities, for the nine months ended September 30, 2016 and 2015.

(in millions)	2016	2015
Restructuring accruals - January 1	\$ 3	\$ 12
Restructuring charges	18	5
Cash payments	(11)	(11)
Foreign currency and other	(1)	(1)
Restructuring accruals - September 30	<u>\$ 9</u>	<u>\$ 5</u>

By segment:		
Water Infrastructure	\$ 4	\$ 2
Applied Water	—	—
Regional selling locations (a)	3	3
Corporate and other	2	—

(a) Regional selling locations consist primarily of selling and marketing organizations that incurred restructuring expense which was allocated to the segments. The liabilities associated with restructuring expense were not allocated to the segments.

The following is a rollforward for the nine months ended September 30, 2016 and 2015 of employee position eliminations associated with restructuring activities.

	2016	2015
Planned reductions - January 1	82	133
Additional planned reductions	364	87
Actual reductions	(296)	(120)
Planned reductions - September 30	<u>150</u>	<u>100</u>

Total expected costs associated with actions that commenced during 2016 are approximately \$20 million for Water Infrastructure, including \$11 million incurred during the nine months ended September 30, 2016. These costs primarily consist of severance charges. We currently expect activity related to these actions to continue through the end of 2017. Total expected costs associated with actions that commenced during 2016 are approximately \$6 million for Applied Water, including \$4 million incurred during the nine months ended September 30, 2016. These costs primarily consist of severance charges. We currently expect activity related to these actions to continue through the end of 2017. Total expected costs associated with actions that commenced during 2016 are approximately \$2 million for Corporate, which we incurred during the nine months ended September 30, 2016. These costs primarily consist of severance charges.

Total expected costs associated with actions that commenced during 2015 are approximately \$5 million for Water Infrastructure. Approximately \$4 million of the expected cost was incurred in 2015 and \$1 million was incurred during the nine months ended September 30, 2016. These costs primarily consist of severance charges and substantially all of the costs associated with these actions have been incurred. Total expected costs associated with actions that commenced during 2015 are approximately \$1 million for Applied Water. These costs primarily consist of severance charges and substantially all of the costs associated with these actions were incurred in 2015.

## Note 5. Income Taxes

Our quarterly provision for income taxes is measured using an estimated annual effective tax rate, adjusted for discrete items within periods presented. The comparison of our effective tax rate between periods is significantly impacted by the level and mix of earnings and losses by tax jurisdiction, foreign income tax rate differentials and discrete items.

The income tax provision for the three months ended September 30, 2016 was \$22 million resulting in an effective tax rate of 22.9%, compared to \$19 million resulting in an effective tax rate of 17.4% for the same period in 2015. The income tax provision for the nine months ended September 30, 2016 was \$40 million resulting in an effective tax rate of 16%, compared to \$49 million resulting in an effective tax rate of 17.6% for the same period in 2015. The effective tax rate was lower than the United States federal statutory rate primarily due to geographic mix of earnings in both periods as well as the release of an unrecognized tax benefit in 2016 as a result of the effective settlement of a tax examination offset in part by the establishment of a valuation allowance in 2016.

#### **Unrecognized Tax Benefits**

We recognize tax benefits from uncertain tax positions only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the condensed consolidated financial statements from such positions are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement.

The amount of unrecognized tax benefits at September 30, 2016 was \$27 million, which is a reduction of \$20 million from the balance as of December 31, 2015, resulting primarily from the effective settlement of a tax examination in 2016. The unrecognized tax benefits, if ultimately recognized will reduce our effective tax rate. We do not believe that the unrecognized tax benefits will significantly change within the next twelve months.

We classify interest expense relating to unrecognized tax benefits as a component of other non-operating expense, net, and tax penalties as a component of income tax expense in our Condensed Consolidated Income Statements. As of September 30, 2016, we had \$2 million of interest accrued for unrecognized tax benefits.

#### **Note 6. Earnings Per Share**

The following is a reconciliation of the shares used in calculating basic and diluted net earnings per share.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Net income (in millions)	\$ 73	\$ 88	\$ 210	\$ 226
Shares (in thousands):				
Weighted average common shares outstanding	179,272	180,815	178,951	181,428
Add: Participating securities (a)	36	30	37	43
Weighted average common shares outstanding — Basic	179,308	180,845	178,988	181,471
Plus incremental shares from assumed conversions: (b)				
Dilutive effect of stock options	593	424	462	489
Dilutive effect of restricted stock units and performance share units	409	363	388	376
Weighted average common shares outstanding — Diluted	180,310	181,632	179,838	182,336
Basic earnings per share	\$ 0.41	\$ 0.48	\$ 1.17	\$ 1.25
Diluted earnings per share	\$ 0.41	\$ 0.48	\$ 1.17	\$ 1.24

(a) Restricted stock unit awards containing rights to non-forfeitable dividends that participate in undistributed earnings with common shareholders are considered participating securities for purposes of computing earnings per share.

(b) Incremental shares from stock options, restricted stock units and performance share units are computed by the treasury stock method. The weighted average shares listed below were not included in the computation of diluted earnings per share because to do so would have been anti-dilutive for the periods presented or were otherwise excluded under the treasury stock method. The treasury stock method calculates dilution assuming the exercise of all in-the-money options and vesting of restricted stock units and performance share units, reduced by the repurchase of shares with the proceeds from the assumed exercises and unrecognized compensation expense for outstanding awards. Performance share units will be included in the treasury stock calculation of diluted earnings per share upon achievement of underlying performance or market conditions at the end of the reporting period. See Note 14, "Share-Based Compensation Plans" to the condensed consolidated financial statements for further detail on the performance share units.

(in thousands)	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2016	2015	2016	2015
Stock options	1,701	2,703	2,008	2,712
Restricted stock units	529	747	570	754
Performance share units	414	191	360	187

#### Note 7. Inventories

The components of total inventories are summarized as follows:

(in millions)	September 30, 2016	December 31, 2015
Finished goods	\$ 220	\$ 188
Work in process	46	32
Raw materials	222	213
Total inventories	<u>\$ 488</u>	<u>\$ 433</u>

The amounts in the above table of inventory composition as of December 31, 2015 have been revised to appropriately classify as Raw Materials \$25 million previously included in Finished Goods.

#### Note 8. Property, Plant and Equipment

The components of total property, plant and equipment, net are as follows:

(in millions)	September 30, 2016	December 31, 2015
Land, buildings and improvements	\$ 247	\$ 240
Machinery and equipment	649	650
Equipment held for lease or rental	225	205
Furniture and fixtures	81	79
Construction work in progress	61	46
Other	19	19
Total property, plant and equipment, gross	<u>1,282</u>	<u>1,239</u>
Less accumulated depreciation	<u>842</u>	<u>800</u>
Total property, plant and equipment, net	<u>\$ 440</u>	<u>\$ 439</u>

Depreciation expense of \$20 million and \$61 million was recognized in the three and nine months ended September 30, 2016, respectively, and \$22 million and \$69 million for the three and nine months ended September 30, 2015.

## Note 9. Goodwill and Other Intangible Assets

### Goodwill

Changes in the carrying value of goodwill by reportable segment for the nine months ended September 30, 2016 are as follows:

(in millions)	Water Infrastructure	Applied Water	Total
Balance as of January 1, 2016	\$ 1,066	\$ 518	\$ 1,584
Activity in 2016			
Acquired (a)	39	—	39
Foreign currency and other	(2)		(2)
Balance as of September 30, 2016	<u>\$ 1,103</u>	<u>\$ 518</u>	<u>\$ 1,621</u>

(a) On February 1, 2016, we acquired Tideland and recorded \$39 million of goodwill. Refer to Note 3, "Acquisitions and Divestitures" for additional information.

### Other Intangible Assets

Information regarding our other intangible assets is as follows:

(in millions)	September 30, 2016			December 31, 2015		
	Carrying Amount	Accumulated Amortization	Net Intangibles	Carrying Amount	Accumulated Amortization	Net Intangibles
Customer and distributor relationships	\$ 342	\$ (159)	\$ 183	\$ 320	\$ (140)	\$ 180
Proprietary technology and patents	119	(60)	59	116	(54)	62
Trademarks	43	(22)	21	35	(19)	16
Software	168	(119)	49	155	(110)	45
Other	7	(7)	—	8	(8)	—
Indefinite-lived intangibles	132	—	132	132	—	132
	<u>\$ 811</u>	<u>\$ (367)</u>	<u>\$ 444</u>	<u>\$ 766</u>	<u>\$ (331)</u>	<u>\$ 435</u>

Amortization expense related to finite-lived intangible assets was \$12 million and \$36 million for the three and nine months ended September 30, 2016, respectively, and \$11 million and \$33 million for the three and nine months ended September 30, 2015, respectively.

## Note 10. Derivative Financial Instruments

### Risk Management Objective of Using Derivatives

We are exposed to certain risks arising from both our business operations and economic conditions, and principally manage our exposures to these risks through management of our core business activities. Certain of our foreign operations expose us to fluctuations of foreign interest rates and exchange rates that may impact revenue, expenses, cash receipts, cash payments, and the value of our stockholders' equity. We enter into derivative financial instruments to protect the value or fix the amount of certain cash flows in terms of the functional currency of the business unit with that exposure and reduce the volatility in stockholders' equity.

### Cash Flow Hedges of Foreign Exchange Risk

We are exposed to fluctuations in various foreign currencies against our functional currencies. We use foreign currency derivatives, including currency forward agreements, to manage our exposure to fluctuations in the various exchange rates. Currency forward agreements involve fixing the foreign currency exchange rate for delivery of a specified amount of foreign currency on a specified date.

Certain business units with exposure to foreign currency exchange risks have designated certain currency forward agreements as cash flow hedges of forecasted intercompany inventory purchases and sales. Our principal currency exposures relate to the Euro, Swedish Krona, British Pound, Canadian Dollar, Polish Zloty and Australian Dollar. We held forward foreign exchange contracts with purchase notional amounts totaling \$21 million.

and \$94 million as of September 30, 2016 and December 31, 2015, respectively. As of September 30, 2016, our most significant foreign currency derivatives include contracts to purchase Swedish Krona and sell Euro, sell Canadian Dollar and purchase US Dollar, sell Canadian Dollar and purchase Euro, and purchase Polish Zloty and sell Euro. The purchased notional amounts associated with these currency derivatives are \$14 million, \$2 million, \$2 million, and \$2 million, respectively. As of December 31, 2015, our most significant foreign currency derivatives included contracts to purchase Swedish Krona and sell Euro, sell U.S. Dollar and purchase Euro, and to sell British Pound and purchase Euro. The purchased notional amounts associated with these currency derivatives are \$51 million, \$24 million and \$12 million, respectively.

### **Hedges of Net Investments in Foreign Operations**

We are exposed to changes in foreign currencies impacting our net investments held in foreign subsidiaries.

#### **Cross Currency Swaps**

Beginning in 2015, we entered into cross currency swaps to manage our exposure to fluctuations in the Euro-U.S. Dollar exchange rate. The total notional amount of derivative instruments designated as net investment hedges was \$419 million and \$411 million as of September 30, 2016 and December 31, 2015, respectively.

#### **Foreign Currency Denominated Debt**

On March 11, 2016, we issued 2.250% Senior Notes of €500 million aggregate principal amount due March 2023. We designated the entirety of the outstanding balance, or \$555 million, net of unamortized discount, as a hedge of a net investment in certain foreign subsidiaries.

#### **Forward Contracts**

On September 23, 2016, we entered into forward contracts to manage our exposure to fluctuations in the Euro-U.S. Dollar exchange rate. The total notional amount of derivative instruments designated as net investment hedges was \$336 million as of September 30, 2016.

The table below presents the effect of our derivative financial instruments on the Condensed Consolidated Income Statements and Statements of Comprehensive Income.

(in millions)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
<b>Cash Flow Hedges</b>				
<b>Foreign Exchange Contracts</b>				
Amount of (loss) recognized in OCI (a)	\$ —	\$ —	\$ —	\$ (5)
Amount of (gain) loss reclassified from OCI into revenue (a)	(1)	5	(1)	16
Amount of (gain) loss reclassified from OCI into cost of revenue (a)	—	—	(1)	1
<b>Net Investment Hedges</b>				
<b>Cross Currency Swaps</b>				
Amount of (loss) recognized in OCI (a)	\$ (7)	\$ —	\$ (7)	\$ —
<b>Foreign Currency Denominated Debt</b>				
Amount of (loss) recognized in OCI (a)	\$ (5)	\$ —	\$ (10)	\$ —

(a) Effective portion

As of September 30, 2016, \$1 million of net unrealized losses on cash flow hedges are expected to be reclassified into earnings in the next 12 months. The ineffective portion of a cash flow hedge is recognized immediately in selling, general and administrative expenses in the Condensed Consolidated Income Statements and was not material for the three and nine months ended September 30, 2016 and 2015.

As of September 30, 2016, no gains or losses on the net investment hedges are expected to be reclassified into earnings over their duration. The net investment hedges did not experience any ineffectiveness for the three and nine months ended September 30, 2016.

The fair values of our derivative assets and liabilities are measured on a recurring basis using Level 2 inputs and are determined through the use of models that consider various assumptions including yield curves, time value and other measurements.

The fair values of our foreign exchange contracts currently included in our hedging program designated as hedging instruments were as follows:

(in millions)	September 30, 2016	December 31, 2015
<b>Derivatives designated as hedging instruments</b>		
<b>Assets</b>		
<i>Cash Flow Hedges</i>		
Other current assets	\$ —	\$ 2
<b>Liabilities</b>		
<i>Cash Flow Hedges</i>		
Other current liabilities	\$ (1)	\$ —
<i>Net Investment Hedges</i>		
Other non-current liabilities	\$ (30)	\$ (18)

The fair value of our long-term debt, due in 2023, designated as a net investment hedge was \$608 million as of September 30, 2016.

#### **Note 11. Accrued and Other Current Liabilities**

The components of total accrued and other current liabilities are as follows:

(in millions)	September 30, 2016	December 31, 2015
Compensation and other employee benefits	\$ 163	\$ 156
Customer-related liabilities	70	64
Accrued warranty costs	35	33
Accrued taxes	67	64
Other accrued liabilities	103	90
Total accrued and other current liabilities	<u>\$ 438</u>	<u>\$ 407</u>



## Note 12. Credit Facilities and Debt

Total debt outstanding is summarized as follows:

(in millions)	September 30, 2016	December 31, 2015
3.550% Senior Notes due 2016	\$ —	\$ 600
4.875% Senior Notes due 2021 (a)	600	600
2.250% Senior Notes due 2023 (a)	560	—
Commercial paper	20	—
Research and development facility agreement	42	76
Other	—	2
Debt issuance costs and unamortized discount (b)	(12)	(4)
Total debt	1,210	1,274
Less: short-term borrowings and current maturities of long-term debt	62	78
Total long-term debt	\$ 1,148	\$ 1,196

(a) The fair value of our Senior Notes (as defined below) was determined using quoted prices in active markets for identical securities, which are considered Level 1 inputs. The fair value of our Senior Notes due 2021 was \$654 million and \$640 million as of September 30, 2016 and December 31, 2015, respectively. The fair value of our Senior Notes due 2023 was \$608 million as of September 30, 2016.

(b) The debt issuance costs and unamortized discount are recognized as a reduction in the carrying value of the Senior Notes in the Condensed Consolidated Balance Sheets and are being amortized to interest expense in our Condensed Consolidated Income Statements over the expected remaining terms of the Senior Notes.

### Senior Notes

On September 20, 2011, we issued 3.550% Senior Notes of \$600 million aggregate principal amount due September 2016 (the "Senior Notes due 2016") and 4.875% Senior Notes of \$600 million aggregate principal amount due October 2021 (the "Senior Notes due 2021"). On March 11, 2016, we issued 2.250% Senior Notes of €500 million aggregate principal amount due March 2023 (the "Senior Notes due 2023" and together with the Senior Notes due 2016 and 2021, the "Senior Notes").

The Senior Notes include covenants which restrict our ability, subject to exceptions, to incur debt secured by liens and engage in sale and leaseback transactions, as well as provide for customary events of default (subject, in certain cases, to receipt of notice of default and/or customary grace and cure periods). We may redeem the Senior Notes, as applicable, in whole or in part, at any time at a redemption price equal to the principal amount of the Senior Notes to be redeemed, plus a make-whole premium. We may redeem all or a portion of the Senior Notes due 2023 at our option at any time on or after December 11, 2022 (three months prior to their maturity), at a redemption price equal to 100% of the principal amount, plus accrued and unpaid interest to the redemption date. We may also redeem all, but not part, of the Senior Notes due 2023 in the event of specified tax events as described in the applicable Senior Notes indenture. If a change of control triggering event (as defined in the applicable Senior Notes indenture) occurs, we will be required to make an offer to purchase the Senior Notes at a price equal to 101% of their principal amount plus accrued and unpaid interest to the date of repurchase. As of September 30, 2016, we were in compliance with all covenants for the Senior Notes.

Interest on the Senior Notes due 2016 was payable on March 20 and September 20 of each year. Interest on the Senior Notes due 2021 is payable on April 1 and October 1 of each year. Interest on the Senior Notes due 2023 is payable on March 11 of each year.

On April 11, 2016, our Senior Notes due 2016 were settled for a total of \$607 million which included make-whole interest expense of \$7 million. The Company recorded this loss on extinguishment of the debt in the second quarter of 2016 as interest expense.

### Bridge Facility

On August 15, 2016, we entered into a \$1.3 billion senior unsecured bridge facility (the "Bridge Facility"). The Bridge Facility was put in place to finance the Sensus acquisition and to pay the related fees and expenses to the extent we were unable to finance the Sensus acquisition through available cash on hand, a new term loan and the

issuance of the Notes (refer to Note 15 for further information on the issuance of the Notes). The Bridge Facility was terminated on October 31, 2016 in connection with the Sensus acquisition.

#### ***Five-Year Revolving Credit Facility***

Effective March 27, 2015, Xylem entered into a Five-Year Revolving Credit Facility (the "Credit Facility") with Citibank, N.A., as administrative agent, and a syndicate of lenders. The Credit Facility provides for an aggregate principal amount of up to \$600 million of: (i) revolving extensions of credit (the "revolving loans") outstanding at any time and (ii) the issuance of letters of credit in a face amount not in excess of \$100 million outstanding at any time. The Credit Facility provides for increases of up to \$200 million for a possible maximum total of \$800 million in aggregate principal amount at our request and with the consent of the institutions providing such increased commitments.

At our election, the interest rate per annum applicable to the revolving loans will be based on either (i) a Eurodollar rate determined by reference to LIBOR, adjusted for statutory reserve requirements, plus an applicable margin or (ii) a fluctuating rate of interest determined by reference to the greatest of: (a) the prime rate of Citibank, N.A., (b) the U.S. Federal funds effective rate plus half of 1% or (c) the Eurodollar rate determined by reference to LIBOR, adjusted for statutory reserve requirements, in each case, plus an applicable margin.

In accordance with the terms of an amendment to the Credit Facility dated August 30, 2016, we may not exceed a maximum leverage ratio of 4.00 to 1.00 (based on a ratio of total debt to earnings before interest, taxes, depreciation and amortization) for a period of 12-months following the Sensus acquisition and a maximum leverage ratio of 3.50 to 1.00 through the rest of the term. The Credit Facility also contains limitations on, among other things, incurring secured debt, granting liens, entering into sale and leaseback transactions, mergers, consolidations, liquidations, dissolutions and sales of assets. In addition, the Credit Facility contains other terms and conditions such as customary representations and warranties, additional covenants and customary events of default. As of September 30, 2016, we were in compliance with all covenants.

As of September 30, 2016, the Credit Facility was undrawn.

#### ***Commercial Paper***

Our commercial paper program generally serves as a means of short-term funding and has a combined outstanding limit of \$600 million inclusive of the Five-Year Revolving Credit Facility. As of September 30, 2016, \$20 million of the Company's \$600 million commercial paper program was outstanding at a weighted average interest rate of 0.75%. We will periodically borrow under this program and may borrow under it in future periods.

#### ***Research and Development Facility Agreement***

On December 3, 2015, the Company amended and restated its Risk Sharing Finance Facility Agreement (the "R&D Facility Agreement") with The European Investment Bank (the "EIB") to amend the maturity date. The facility provides an aggregate principal amount of up to €120 million (approximately \$135 million) to finance research projects and infrastructure development in the European Union. The Company's wholly owned subsidiaries in Luxembourg, Xylem Holdings S.á r.l. and Xylem International S.á r.l., are the borrowers under the R&D Facility Agreement. The obligations of the borrowers under the R&D Facility Agreement are guaranteed by the Company under an Amended and Restated Deed of Guarantee, dated as of December 4, 2013, in favor of the EIB. The funds are available during the period from 2013 through 2016 at the Company's facilities in Sweden, Germany, Italy, the United Kingdom, Austria, Norway and Hungary.

Under the R&D Facility Agreement, the borrower was able to draw loans on or before March 31, 2016 with a maturity of no longer than 12 years. The R&D Facility Agreement provides for Fixed Rate loans and Floating Rate loans. The interest rate per annum applicable to Fixed Rate loans is at a fixed percentage rate per annum specified by the EIB which includes the applicable margin. The interest rate per annum applicable to Floating Rate loans is at the rate determined by reference to EURIBOR for loans drawn in Euros and LIBOR for loans drawn in Pounds Sterling or U.S. Dollars, plus an applicable spread specified by the EIB which includes the applicable margin. The applicable margin for both Fixed Rate loans and Floating Rate loans is determined by reference to the credit rating of the Company.

In accordance with the terms of the R&D Facility Agreement, we may not exceed a maximum leverage ratio of 3.50 to 1.00 (based on a ratio of total debt to earnings before interest, taxes, depreciation and amortization) throughout the term. The R&D Facility Agreement also contains limitations on, among other things, incurring debt, granting liens, and entering into sale and leaseback transactions. In addition, the R&D Facility Agreement contains other terms and conditions, such as customary representations and warranties, additional covenants and customary events of default. As of September 30, 2016, we were in compliance with all covenants.

As of September 30, 2016 and December 31, 2015, \$42 million and \$76 million was outstanding, respectively, under the R&D Facility Agreement. Although the borrowing term for this arrangement is up to five years, we have classified it as short-term debt on our Condensed Consolidated Balance Sheets since we intend to repay this obligation in less than a year.

### Note 13. Postretirement Benefit Plans

The components of net periodic benefit cost for our defined benefit pension plans are as follows:

(in millions)	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2016	2015	2016	2015
<b>Domestic defined benefit pension plans:</b>				
Service cost	\$ 1	\$ 1	\$ 2	\$ 2
Interest cost	1	1	3	3
Expected return on plan assets	(2)	(2)	(4)	(4)
Amortization of net actuarial loss	1	1	2	2
Net periodic benefit cost	\$ 1	\$ 1	\$ 3	\$ 3
<b>International defined benefit pension plans:</b>				
Service cost	\$ 3	\$ 3	\$ 8	\$ 9
Interest cost	6	6	18	18
Expected return on plan assets	(8)	(8)	(25)	(25)
Amortization of net actuarial loss	2	3	6	10
Net periodic benefit cost	\$ 3	\$ 4	\$ 7	\$ 12
<b>Total net periodic benefit cost</b>	<b>\$ 4</b>	<b>\$ 5</b>	<b>\$ 10</b>	<b>\$ 15</b>

The total net periodic benefit cost for other postretirement employee benefit plans was less than \$1 million and \$2 million including amounts recognized in other comprehensive income ("OCI") of less than \$1 million for both the three and nine months ended September 30, 2016, respectively. The total net periodic benefit cost for other postretirement employee benefit plans was \$1 million and \$3 million including amounts recognized in OCI of less than \$1 million for both the three and nine months ended September 30, 2015, respectively.

We contributed \$22 million and \$21 million to our defined benefit plans during the nine months ended September 30, 2016 and 2015, respectively. Additional contributions ranging between approximately \$6 million and \$10 million are expected during the remainder of 2016.

### Note 14. Share-Based Compensation Plans

Share-based compensation expense was \$5 million and \$15 million during the three and nine months ended September 30, 2016, respectively, and \$3 million and \$11 million during the three and nine months ended September 30, 2015, respectively. The unrecognized compensation expense related to our stock options, restricted stock units and performance share units was \$6 million, \$19 million and \$10 million, respectively, at September 30, 2016 and is expected to be recognized over a weighted average period of 1.9, 1.8 and 2.2 years, respectively. The amount of cash received from the exercise of stock options was \$22 million and \$14 million for the nine months ended September 30, 2016 and 2015, respectively.

### Stock Option Grants

The following is a summary of the changes in outstanding stock options for the nine months ended September 30, 2016.

	Shares (in thousands)	Weighted Average Exercise Price / Share	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value (in millions)
Outstanding at January 1, 2016	2,561	\$ 31.16	6.8	
Granted	463	37.90		
Exercised	(797)	27.91		
Forfeited and expired	(44)	35.55		
<b>Outstanding at September 30, 2016</b>	<b>2,183</b>	<b>\$ 33.68</b>	<b>7.2</b>	<b>\$ 41</b>
<b>Options exercisable at September 30, 2016</b>	<b>1,222</b>	<b>\$ 29.40</b>	<b>5.9</b>	<b>\$ 26</b>
<b>Vested and expected to vest as of September 30, 2016</b>	<b>2,098</b>	<b>\$ 33.53</b>	<b>7.1</b>	<b>\$ 40</b>

The total intrinsic value of options exercised (which is the amount by which the stock price exceeded the exercise price of the options on the date of exercise) during the nine months ended September 30, 2016 was \$12 million.

### Stock Option Fair Value

The fair value of each option grant was estimated on the date of grant using the binomial lattice pricing model which incorporates multiple and variable assumptions over time, including assumptions such as employee exercise patterns, stock price volatility and changes in dividends. The following are weighted-average assumptions for 2016 grants.

Volatility	28.87 %
Risk-free interest rate	1.41 %
Dividend yield	1.63 %
Expected term (in years)	5.6
Weighted-average fair value / share	\$ 9.05

Expected volatility is calculated based on a weighted analysis of historic and implied volatility measures for a set of peer companies and Xylem. We use historical data to estimate option exercise and employee termination behavior within the valuation model. Employee groups and option characteristics are considered separately for valuation purposes. The expected term represents an estimate of the period of time options are expected to remain outstanding. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of option grant.

### Restricted Stock Unit Grants

The following is a summary of restricted stock units activity for the nine months ended September 30, 2016. The fair value of the restricted stock units is equal to the closing share price on the date of the grant.

	Shares (in thousands)	Weighted Average Grant Date Fair Value /Share
Outstanding at January 1, 2016	1,013	\$ 34.52
Granted	300	38.99
Vested	(291)	29.61
Forfeited	(75)	36.75
<b>Outstanding at September 30, 2016</b>	<b>947</b>	<b>\$ 37.27</b>

### ROIC Performance Share Unit Grants

The following is a summary of Return on Invested Capital ("ROIC") performance share unit grants for the nine months ended September 30, 2016. The fair value of the ROIC performance share units is equal to the closing share price on the date of the grant.

	Shares (in thousands)	Weighted Average Grant Date Fair Value /Share
Outstanding at January 1, 2016	160	\$ 35.48
Granted	111	37.87
Vested	—	—
Forfeited	(20)	28.31
<b>Outstanding at September 30, 2016</b>	<b>251</b>	<b>\$ 37.09</b>

### TSR Performance Share Units Grants

The following is a summary of our Total Shareholder Return ("TSR") performance share unit grants for the nine months ended September 30, 2016.

	Shares (in thousands)	Weighted Average Grant Date Fair Value /Share
Outstanding at January 1, 2016	—	\$ —
Granted	111	46.13
Vested	—	—
Forfeited	(2)	45.34
<b>Outstanding at September 30, 2016</b>	<b>109</b>	<b>\$ 46.14</b>

The fair value of TSR performance share units was calculated on the date of grant using a Monte Carlo simulation model utilizing several key assumptions, including expected Company and peer company share price volatility, correlation coefficients between peers, the risk-free rate of return, the expected dividend yield and other award design features. The following are weighted-average assumptions for 2016 grants.

Volatility	31.7 %
Risk-free interest rate	0.88 %
Dividend yield	1.64 %

### Note 15. Capital Stock

On August 24, 2015, our Board of Directors authorized the repurchase of up to \$500 million in shares with no expiration date. The program's objective is to deploy our capital in a manner that benefits our shareholders and maintains our focus on growth. There were no shares repurchased under this program during the three and nine months ended September 30, 2016. There are up to \$420 million in shares that may still be purchased under this plan as of September 30, 2016.

On August 20, 2013, the Board of Directors authorized the repurchase of up to \$250 million in shares with no expiration date. The program's objective was to deploy our capital in a manner that benefited our shareholders and maintained our focus on growth. For the three and nine months ended September 30, 2015, we repurchased 0.6 million and 2.0 million shares for \$20 million and \$70 million, respectively. As of December 31, 2015, we have exhausted the authorized amount to repurchase shares under this plan.

On August 18, 2012, our Board of Directors authorized the repurchase of up to 2.0 million shares of common stock with no expiration date. The program's objective is to offset dilution associated with various Xylem employee stock plans by acquiring shares in the open market from time to time. There were no shares repurchased under this program during the three and nine months ended September 30, 2016. During the three and nine months ended September 30, 2015 we repurchased 0.8 million shares for \$25 million in both periods. There are up to 0.3 million shares (approximately \$13 million in value) that may still be purchased under this plan as of September 30, 2016.

Aside from the aforementioned repurchase programs, we repurchased less than 0.1 million and 0.1 million shares for less than \$1 million and \$3 million for the three and nine months ended September 30, 2016 and 2015, respectively, in relation to settlement of employee tax withholding obligations due as a result of the vesting of restricted stock units.

**Note 16. Accumulated Other Comprehensive Income (Loss)**

The following table provides the components of accumulated other comprehensive income (loss) for the three months ended September 30, 2016:

(in millions)	Foreign Currency Translation	Postretirement Benefit Plans	Derivative Instruments	Total
Balance at July 1, 2016	\$ (69)	\$ (183)	\$ —	\$ (252)
Foreign currency translation adjustment	(8)	—	—	(8)
Tax on foreign currency translation adjustment	4	—	—	4
Amortization of net actuarial loss on postretirement benefit plans into:				
Selling, general and administrative expenses	—	2	—	2
Other non-operating expense, net	—	1	—	1
Income tax impact on amortization of postretirement benefit plan items	—	(1)	—	(1)
Reclassification of unrealized gain on derivative hedge agreements into revenue	—	—	(1)	(1)
<b>Balance at September 30, 2016</b>	<b>\$ (73)</b>	<b>\$ (181)</b>	<b>\$ (1)</b>	<b>\$ (255)</b>

The following table provides the components of accumulated other comprehensive income (loss) for the nine months ended September 30, 2016:

(in millions)	Foreign Currency Translation	Postretirement Benefit Plans	Derivative Instruments	Total
Balance at January 1, 2016	\$ (43)	\$ (185)	\$ (10)	\$ (238)
Foreign currency translation adjustment	(25)	—	—	(25)
Tax on foreign currency translation adjustment	6	—	—	6
Amortization of net actuarial loss on postretirement benefit plans into:				
Cost of revenue	—	2	—	2
Selling, general and administrative expenses	—	5	—	5
Other non-operating expense, net	—	1	—	1
Income tax impact on amortization of postretirement benefit plan items	—	(4)	—	(4)
Reclassification of unrealized gain on derivative hedge agreements into cost of revenue	—	—	(1)	(1)
Reclassification of unrealized gain on derivative hedge agreements into revenue	—	—	(1)	(1)
Reclassification of unrealized loss on net investment hedge	(11)	—	11	—
<b>Balance at September 30, 2016</b>	<b>\$ (73)</b>	<b>\$ (181)</b>	<b>\$ (1)</b>	<b>\$ (255)</b>

**Note 17. Commitments and Contingencies****Legal Proceedings**

From time to time, we are involved in legal proceedings that are incidental to the operation of our businesses, including acquisitions and divestitures, intellectual property matters, product liability and personal injury claims, employment and pension matters, government and commercial contract disputes.

On or about February 17, 2009, following a statement submitted to the Spanish Competition Authority (Comision Nacional de la Competencia, "CNC") by Grupo Industrial Ercole Marelli, S.A. regarding an anti-competitive agreement in which it said it had been participating, the CNC conducted an investigation at ITT Water &

Wastewater España S.A. (now named Xylem Water Solutions España S.A.), at the Spanish Association of Fluid Pump Manufacturers (the "Association"), and at the offices of other members of the Association. On September 16, 2009, the Directorate of Investigation of the CNC commenced formal proceedings for alleged restrictive practices allegedly prohibited under applicable law. Following the conclusion of the formal proceedings, the CNC Council imposed fines on the Association and nineteen Spanish manufacturers and distributors of fluid pumps, including a fine of Euro 2.4 million applied to ITT Water & Wastewater España S.A. and ITT Corporation (now ITT LLC). The Company's appeals of the decision were rejected and the fine was paid in March 2016. This matter is now closed.

From time to time claims may be asserted against Xylem alleging injury caused by any of our products resulting from asbestos exposure. We believe there are numerous legal defenses available for such claims and would defend ourselves vigorously. Pursuant to the Distribution Agreement among ITT Corporation (now ITT LLC), Exelis and Xylem, ITT Corporation (now ITT LLC) has an obligation to indemnify, defend and hold Xylem harmless for asbestos product liability matters, including settlements, judgments, and legal defense costs associated with all pending and future claims that may arise from past sales of ITT's legacy products. We believe ITT Corporation (now ITT LLC) remains a substantial entity with sufficient financial resources to honor its obligations to us.

Although the ultimate outcome of any legal matter cannot be predicted with certainty, based on present information, including our assessment of the merits of the particular claims, we do not expect that any asserted or unasserted legal claims or proceedings, individually or in aggregate, will have a material adverse effect on our results of operations, or financial condition.

### ***Indemnifications***

As part of our 2011 spin-off from our former parent, ITT Corporation (now ITT LLC), Exelis Inc. and Xylem will indemnify, defend and hold harmless each of the other parties with respect to such parties' assumed or retained liabilities under the Distribution Agreement and breaches of the Distribution Agreement or related spin agreements. The former parent's indemnification obligations include asserted and unasserted asbestos and silica liability claims that relate to the presence or alleged presence of asbestos or silica in products manufactured, repaired or sold prior to October 31, 2011, the Distribution Date, subject to limited exceptions with respect to certain employee claims, or in the structure or material of any building or facility, subject to exceptions with respect to employee claims relating to Xylem buildings or facilities. The indemnification associated with pending and future asbestos claims does not expire. Xylem has not recorded a liability for material matters for which we expect to be indemnified by the former parent or Exelis Inc. through the Distribution Agreement and we are not aware of any claims or other circumstances that would give rise to material payments from us under such indemnifications. On May 29, 2015, Harris Inc. acquired Exelis. As the parent of Exelis, Harris Inc. is responsible for Exelis's indemnification obligations under the Distribution Agreement.

### ***Guarantees***

We obtain certain stand-by letters of credit, bank guarantees and surety bonds from third-party financial institutions in the ordinary course of business when required under contracts or to satisfy insurance related requirements. As of September 30, 2016 and December 31, 2015, the amount of stand-by letters of credit, bank guarantees and surety bonds was \$177 million and \$161 million, respectively.

### ***Environmental***

In the ordinary course of business, we are subject to federal, state, local, and foreign environmental laws and regulations. We are responsible, or are alleged to be responsible, for ongoing environmental investigation and remediation of sites in various countries. These sites are in various stages of investigation and/or remediation and in many of these proceedings our liability is considered de minimis. We have received notification from the U.S. Environmental Protection Agency, and from similar state and foreign environmental agencies, that a number of sites formerly or currently owned and/or operated by Xylem or for which we are responsible under the Distribution Agreement, and other properties or water supplies that may be or have been impacted from those operations, contain disposed or recycled materials or wastes and require environmental investigation and/or remediation. These sites include instances where we have been identified as a potentially responsible party under federal and state environmental laws and regulations.

Accruals for environmental matters are recorded on a site-by-site basis when it is probable that a liability has been incurred and the amount of the liability can be reasonably estimated, based on current law and existing



technologies. Our accrued liabilities for these environmental matters represent the best estimates related to the investigation and remediation of environmental media such as water, soil, soil vapor, air and structures, as well as related legal fees. These estimates, and related accruals, are reviewed quarterly and updated for progress of investigation and remediation efforts and changes in facts and legal circumstances. Liabilities for these environmental expenditures are recorded on an undiscounted basis. We have estimated and accrued \$4 million as of both September 30, 2016 and December 31, 2015 for environmental matters.

It is difficult to estimate the final costs of investigation and remediation due to various factors, including incomplete information regarding particular sites and other potentially responsible parties, uncertainty regarding the extent of investigation or remediation and our share, if any, of liability for such conditions, the selection of alternative remedial approaches, and changes in environmental standards and regulatory requirements. We believe the total amount accrued is reasonable based on existing facts and circumstances.

### **Warranties**

We warrant numerous products, the terms of which vary widely. In general, we warrant products against defect and specific non-performance. The table below provides the changes in our product warranty accrual.

(in millions)	2016	2015
Warranty accrual – January 1	\$ 33	\$ 31
Net charges for product warranties in the period	20	21
Settlement of warranty claims	(21)	(21)
Foreign currency and other	3	—
Warranty accrual - September 30	<u>\$ 35</u>	<u>\$ 31</u>

### **Note 18. Segment Information**

Our business has two reportable segments: Water Infrastructure and Applied Water. The Water Infrastructure segment, focuses on the transportation, treatment and testing of water, offering a range of products including water and wastewater pumps, treatment and testing equipment, and controls and systems. The Applied Water segment, encompasses the uses of water and focuses on the residential, commercial, industrial and agriculture markets offering a wide range of products, including pumps, valves and heat exchangers.

Additionally, we have Regional selling locations which consist primarily of selling and marketing organizations and related support that offer products and services across both of our reportable segments. Corporate and other consists of corporate office expenses including compensation, benefits, occupancy, depreciation, and other administrative costs, as well as charges related to certain matters, such as environmental matters that are managed at a corporate level and are not included in the business segments in evaluating performance or allocating resources.

The accounting policies of each segment are the same as those described in the summary of significant accounting policies (see Note 1 in the 2015 Annual Report). The following tables contain financial information for each reportable segment:

(in millions)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
<b>Revenue:</b>				
Water Infrastructure	\$ 554	\$ 551	\$ 1,634	\$ 1,602
Applied Water	343	351	1,042	1,057
Total	<u>\$ 897</u>	<u>\$ 902</u>	<u>\$ 2,676</u>	<u>\$ 2,659</u>
<b>Operating Income:</b>				
Water Infrastructure	\$ 79	\$ 83	\$ 203	\$ 195
Applied Water	50	46	140	143
Corporate and other	(20)	(9)	(46)	(31)
Total	<u>\$ 109</u>	<u>\$ 120</u>	<u>\$ 297</u>	<u>\$ 307</u>
<b>Depreciation and Amortization:</b>				
Water Infrastructure	\$ 22	\$ 22	\$ 65	\$ 70
Applied Water	6	7	18	19
Regional selling locations (a)	2	3	8	8
Corporate and other	2	1	6	5
Total	<u>\$ 32</u>	<u>\$ 33</u>	<u>\$ 97</u>	<u>\$ 102</u>
<b>Capital Expenditures:</b>				
Water Infrastructure	\$ 19	\$ 12	\$ 53	\$ 49
Applied Water	4	5	15	15
Regional selling locations (b)	4	3	19	9
Corporate and other	1	1	3	5
Total	<u>\$ 28</u>	<u>\$ 21</u>	<u>\$ 90</u>	<u>\$ 78</u>

(a) Depreciation and amortization expense incurred by the Regional selling locations was included in an overall allocation of Regional selling location costs to the segments; however, a certain portion of that expense was not specifically identified to a segment. That expense is captured in this Regional selling location line.

(b) Represents capital expenditures incurred by the Regional selling locations not allocated to the segments.

The following table contains the total assets for each reportable segment:

(in millions)	September 30, 2016	December 31, 2015
Water Infrastructure	\$ 2,107	\$ 2,024
Applied Water	1,042	1,054
Regional selling location (a)	1,021	905
Corporate and other (b)	608	674
Total	<u>\$ 4,778</u>	<u>\$ 4,657</u>

(a) The Regional selling locations have assets that consist primarily of cash, accounts receivable and inventory which are not allocated to the segments.

(b) Corporate and other consists of items pertaining to our corporate headquarters function, which principally consist of cash, deferred tax assets, pension assets and certain property, plant and equipment.

## **Note 19. Subsequent Events**

### ***Senior Notes***

On October 11, 2016, we issued 3.250% Senior Notes of \$500 million aggregate principal amount due October 2026 (the "Senior Notes due 2026") and 4.375% Senior Notes of \$400 million aggregate principal amount due October 2046 (the "Senior Notes due 2046" and, together with the Senior Notes due 2026, the "Notes"). Interest on the Notes is payable semiannually on May 1 and November 1 of each year beginning on May 1, 2017.

We used the net proceeds of the Notes, together with cash on hand, proceeds from issuances under our existing commercial paper program and borrowings under the Term Loan (as described below), to partially fund the acquisition of the direct and indirect subsidiaries of Sensus (other than Sensus Industries Limited) (refer to Note 3 for further information on the Sensus acquisition).

### ***Term Loan***

On October 24, 2016, the Company's subsidiary, Xylem Europe GmbH (the "borrower") entered into a 12-month €150 million (approximately \$164 million as of October 28, 2016) term loan facility (the "Term Facility") the terms of which are set forth in a term loan agreement, among the borrower, the Company, as parent guarantor and ING Bank. The Company has entered into a parent guarantee in favor of ING Bank also dated October 24, 2016 to secure all present and future obligations of the borrower under the Term Loan Agreement. The Term Facility was used to partially fund the Sensus Acquisition. The Term Facility will mature on October 27, 2017. The Term Facility bears interest at EURIBOR plus 0.35%. The Agreement contains certain representations and warranties, certain affirmative covenants, certain negative covenants, a financial covenant, certain conditions and events of default that are customarily required for similar financings.

### ***Finance Contract with the European Investment Bank***

On October 28, 2016, the Company entered into a Finance Contract (the "Finance Contract") with the European Investment Bank (the "EIB"). The Company's wholly owned subsidiaries in Luxembourg, Xylem Holdings S.á r.l. and Xylem International S.á r.l., are the borrowers under the Finance Contract and Xylem Inc. is the Guarantor. The Finance Contract provides for up to €105 million (approximately \$115 million as of October 28, 2016) to finance research, development and innovation projects in the field of sustainable water and wastewater solutions during the period from 2017 through 2019 in Sweden, Germany, Italy, UK, Hungary and Austria. The Company has unconditionally guaranteed the performance of the borrowers under the Finance Contract.

Under the Finance Contract, the borrowers are able to draw loans on or before April 28, 2018, with a maturity of no longer than 11 years. The Finance Contract contains the same leverage ratio as the Credit Facility. The Finance Contract also contains limitations on, among other things, incurring debt, granting liens, and entering into sale and leaseback transactions. In addition, the Finance Contract contains other terms and conditions, such as customary representations and warranties, additional covenants and customary events of default.

The Finance Contract provides for Fixed Rate loans and Floating Rate loans. The interest rate per annum applicable to Fixed Rate loans is at a fixed percentage rate per annum specified by the EIB which includes the applicable margin. The interest rate per annum applicable to Floating Rate loans is at the rate determined by reference to EURIBOR for loans drawn in Euros and LIBOR for loans drawn in Pounds Sterling or U.S. Dollars, plus an applicable spread specified by the EIB which includes the applicable margin. The applicable margin is 59 basis points (0.59%). We have not drawn any funds under the Finance Contract.

### ***Acquisitions***

On October 18, 2016, we acquired Visenti Pte. Ltd. ("Visenti"), a smart water analytics company focused on leak detection and pressure monitoring solutions to help water utilities manage their water networks for \$8 million with additional contingent consideration of up to \$4 million. Visenti, a privately-owned company headquartered in Singapore, has approximately 25 employees.

**ITEM 2.****MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*The following discussion should be read in conjunction with the condensed consolidated financial statements, including the notes thereto, included elsewhere in this report on Form 10-Q (this "Report"). Except as otherwise indicated or unless the context otherwise requires, "Xylem," "we," "us," "our" and the "Company" refer to Xylem Inc. and its subsidiaries. References in the condensed consolidated financial statements to "ITT" or the "former parent" refer to ITT Corporation (now ITT LLC) and its consolidated subsidiaries (other than Xylem Inc.) as of the applicable periods.*

*This Report contains information that may constitute "forward-looking statements" within the meaning of the Private Securities Litigation Act of 1995. Forward-looking statements by their nature address matters that are, to different degrees, uncertain. Generally, the words "anticipate," "estimate," "expect," "project," "intend," "plan," "forecast," "believe," "target," "will," "could," "would," "should" and similar expressions identify forward-looking statements, which generally are not historical in nature. However, the absence of these words or similar expressions does not mean that a statement is not forward-looking. These forward-looking statements include statements about the capitalization of the Company, the Company's restructuring and realignment, future strategic plans and other statements that describe the Company's business strategy, outlook, objectives, plans, intentions or goals. All statements that address operating or financial performance, events or developments that we expect or anticipate will occur in the future - including statements relating to orders, revenue, operating margins and earnings per share growth, and statements expressing general views about future operating results - are forward-looking statements. Forward-looking statements involve known and unknown risks, uncertainties and other important factors that could cause actual results to differ materially from those expressed or implied in, or reasonably inferred from, such forward-looking statements.*

*Factors that could cause results to differ materially from those anticipated include: overall economic and business conditions, political and other risks associated with our international operations, including military actions, economic sanctions or trade embargoes that could affect customer markets, and non-compliance with laws, including foreign corrupt practice laws, export and import laws and competition laws; potential for unexpected cancellations or delays of customer orders in our reported backlog; our exposure to fluctuations in foreign currency exchange rates; competition and pricing pressures in the markets we serve; the strength of housing and related markets; weather conditions; ability to retain and attract key members of management; our relationship with and the performance of our channel partners; our ability to successfully identify, complete and integrate acquisitions, including the integration of Sensus; our ability to borrow or to refinance our existing indebtedness and availability of liquidity sufficient to meet our needs; changes in the value of goodwill or intangible assets; risks relating to product defects, product liability and recalls; governmental investigations; security breaches or other disruptions of our information technology systems; litigation and contingent liabilities; and other factors set forth under "Item 1A. Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2015 ("2015 Annual Report") and with subsequent filings we make with the Securities and Exchange Commission ("SEC").*

*All forward-looking statements made herein are based on information available to the Company as of the date of this Report. The Company undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.*

*Our quarterly financial periods end on the Saturday closest to the last day of the calendar quarter, except for the fourth quarter which ends on December 31. For ease of presentation, the reporting periods included herein are described as ending on the last day of the calendar quarter.*

**Overview**

Xylem is a leading equipment and service provider for water and wastewater applications with a broad portfolio of products and services addressing the full cycle of water, from collection, distribution and use to the return of water to the environment. Our business focuses on providing technology-intensive equipment and services. Our product and service offerings are organized into two reportable segments: Water Infrastructure and Applied Water. Our segments are aligned with each of the sectors in the cycle of water, water infrastructure and usage applications.

- *Water Infrastructure* serves the water infrastructure sector with pump systems that transport water from aquifers, lakes, rivers and seas; with filtration, ultraviolet and ozone systems that provide treatment, making the water fit to use; and pumping solutions that move the wastewater to treatment facilities where our mixers, biological treatment, monitoring and control systems provide the primary functions in

the treatment process. We provide analytical instrumentation used to measure water quality, flow and level in wastewater, surface water and coastal environments. In the Water Infrastructure segment, we provide the majority of our sales directly to customers with strong application expertise, while the remaining amount is through distribution partners.

- *Applied Water* serves the usage applications sector with water pressure boosting systems for heating, ventilation and air conditioning and for fire protection systems to the residential and commercial building services markets. In addition, our pumps, heat exchangers, valves and controls provide cooling to power plants and manufacturing facilities, as well as circulation for food and beverage processing. We also provide boosting systems for farming irrigation, pumps for dairy operations and rainwater reuse systems for small scale crop and turf irrigation. In the Applied Water segment, we provide the majority of our sales through long-standing relationships with the world's leading distributors, with the remainder going directly to customers.

We sell our equipment and services through direct and indirect channels that serve the needs of each customer type. In the Water Infrastructure segment, we provide the majority of our sales direct to customers with strong application expertise, while the remaining amount is through distribution partners. In the Applied Water segment, we provide the majority of our sales through long-standing relationships with the world's leading distributors, with the remainder going direct to customers.

## Executive Summary

Xylem reported revenue for the third quarter of 2016 of \$897 million, a decrease of 0.6% compared to \$902 million during the third quarter of 2015. Revenue increased 1.0% on a constant currency basis primarily due to organic growth in the public utility market as well as modest commercial and residential market growth and contributions of 0.9% from the recent acquisitions within our Water Infrastructure segment, offset by declines in the industrial market. Operating income for the third quarter of 2016 was \$109 million, reflecting a decrease of 9.2% compared to \$120 million in the third quarter of 2015. Operating margin was 12.2% for 2016 versus 13.3% for 2015, a decrease of 110 basis points. This decline in operating income included increased restructuring and realignment charges and special charges, which increased \$8 million and \$10 million, respectively, in the third quarter as compared to the prior year.

Adjusted operating income was \$131 million with an operating margin of 14.6% in 2016 as compared to operating income of \$124 million with an operating margin of 13.7%. The increase in adjusted operating margin was due to increased cost reductions which were partially offset by cost inflation, strategic investments and unfavorable sales mix.

Additional financial highlights for the quarter ended September 30, 2016 include the following:

- Orders of \$946 million, up 0.7% from \$939 million in the prior year, up 1.3% on an organic basis
- Earnings per share of \$0.41, down 14.6% from the prior year (\$0.54 on an adjusted basis, up 10.2%)
- Cash flow from operating activities of \$274 million for the nine months ended September 30, 2016, up 5.4% from prior year, and free cash flow of \$184 million as compared to \$182 million in the prior year, up 1.1%

## Key Performance Indicators and Non-GAAP Measures

Management reviews key performance indicators including revenue, gross margin, segment operating income and margins, earnings per share, orders growth, working capital, free cash flow and backlog, among others. In addition, we consider certain non-GAAP (or "adjusted") measures to be useful to management and investors evaluating our operating performance for the periods presented, and provide a tool for evaluating our ongoing operations, liquidity and management of assets. This information can assist investors in assessing our financial performance and measures our ability to generate capital for deployment among competing strategic alternatives and initiatives, including, but not limited to, dividends, acquisitions, share repurchases and debt repayment. However, other than with respect to total revenue, we only provide guidance on a non-GAAP basis and do not provide reconciliations of such forward-looking measures to GAAP due to the inherent difficulty in forecasting certain amounts that would be included in GAAP earnings, such as, integration and acquisition-related costs, special charges and tax related special items. These adjusted metrics are consistent with how management views our business and are used to make financial, operating and planning decisions. These metrics, however, are not measures of financial performance under GAAP and should not be considered a substitute for revenue, operating income, net income, earnings per share (basic and diluted) or net cash from operating activities as determined in accordance with GAAP. We consider the following non-GAAP measures, which may not be comparable to similarly titled measures reported by other companies, to be key performance indicators:

- "organic revenue" and "organic orders" defined as revenue and orders, respectively, excluding the impact of fluctuations in foreign currency translation and contributions from acquisitions and divestitures. Divestitures include sales of insignificant portions of our business that did not meet the criteria for classification as a discontinued operation. The period-over-period change resulting from foreign currency translation assumes no change in exchange rates from the prior period.
- "constant currency" defined as financial results adjusted for foreign currency translation impacts by translating current period and prior period activity using the same currency conversion rate. This approach is used for countries whose functional currency is not the U.S. Dollar.
- "adjusted net income" and "adjusted earnings per share" defined as net income and earnings per share, respectively, adjusted to exclude restructuring and realignment costs, special charges, tax-related special items and gain from sale of businesses. A reconciliation of adjusted net income is provided below.

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
(In millions, except for per share data)	2016	2015	2016	2015
Net income	\$ 73	\$ 88	\$ 210	\$ 226
Restructuring and realignment, net of tax benefit of \$4 and \$9 for 2016 \$1 and \$4 for 2015	8	3	23	12
Special charges, net of tax benefit of \$2 and \$7 for 2016 and \$0 for 2015	12	2	20	5
Tax-related special items	4	(3)	(7)	(6)
Gain from sale of businesses, net of \$0 tax	—	—	—	(9)
Adjusted net income	\$ 97	\$ 90	\$ 246	\$ 228
Weighted average number of shares - Diluted	180.3	181.6	179.8	182.3
Adjusted earnings per share	\$ 0.54	\$ 0.49	\$ 1.37	\$ 1.25

- "operating expenses excluding restructuring and realignment costs and special charges" defined as operating expenses, adjusted to exclude restructuring and realignment costs, and special charges.
- "adjusted operating income (loss)" defined as operating income (loss), adjusted to exclude restructuring and realignment costs and special charges, and "adjusted operating margin" defined as adjusted operating income divided by total revenue.
- "realignment costs" defined as costs not included in restructuring costs that are incurred as part of actions taken to reposition our business, including items such as professional fees, severance, relocation, travel, facility set-up and other costs.
- "special charges" defined as costs incurred by the Company, such as interest expense related to the early extinguishment of debt during Q2 2016, initial acquisition related costs (including financing costs related to the bridge loan entered into in Q3 2016 for the Sensus acquisition), costs incurred for the contractual indemnification of tax obligations to ITT and other special non-operating items.
- "tax-related special items" defined as tax items, such as tax return versus tax provision adjustments, tax exam impacts, tax law change impacts, significant reserves for cash repatriation, excess tax benefits/losses and other discrete tax adjustments.

- "free cash flow" defined as net cash from operating activities, as reported in the Condensed Consolidated Statements of Cash Flows, less capital expenditures, as well as adjustments for other significant items that impact current results that management believes are not related to our ongoing operations and performance. Our definition of free cash flow does not consider certain non-discretionary cash payments, such as debt. The following table provides a reconciliation of free cash flow.

(In millions)	Nine Months Ended September 30,	
	2016	2015
Net cash provided by operating activities	\$ 274	\$ 260
Capital expenditures	(90)	(78)
Free cash flow	\$ 184	\$ 182

## 2016 Outlook

We continue to anticipate organic revenue growth in the low single digits in 2016. The following is a summary of our outlook by market.

- Industrial market performance decreased 5% through the third quarter due to continued decreases in the oil and gas market as well as weakness in the mining market driven by dewatering declines. We expect these trends to continue in the fourth quarter resulting in a decline of mid-single-digit performance for the year. This projection assumes flat to down low-single-digits in light industrial applications, and mid-single-digit declines in oil and gas, and mining applications.
- Through September, public utilities increased 12%. We expect growth in the high-single to low-double-digits for 2016 due in part to tougher comparisons in the fourth quarter of the year. We anticipate continued strength in the United States and western Europe.
- In the commercial markets, growth was 3% through the third quarter driven by growth in Europe which was partially offset by weakness in China. In the fourth quarter we expect this trend to continue and expect growth in the low-single-digit range for the year.
- Residential markets declined 2% through September driven by Asia Pacific and the Middle East. While we do anticipate modest growth in the fourth quarter, we expect full year performance will be down in the low-single-digits.
- Our agriculture markets, which is our smallest end market, declined 3% through September. We expect 2016 to be down in the mid-single-digits as we will likely continue to see unfavorable market conditions.

We will continue to execute restructuring and realignment actions to reposition our European and North American businesses in an effort to optimize our cost structure and improve our operational efficiency and effectiveness. During 2016, we expect to incur approximately \$45 million in restructuring and realignment costs. We expect to realize approximately \$1 million of incremental net savings in 2016 from actions initiated in 2015, and an additional \$10 million of net savings from our 2016 actions.

Additional strategic actions we are taking include initiatives to drive above-market growth, advance continuous improvement activities to increase productivity, focus on improving cash performance and drive a disciplined capital deployment strategy.

## Results of Operations

(In millions)	Three Months Ended			Nine Months Ended		
	September 30,			September 30,		
	2016	2015	Change	2016	2015	Change
Revenue	\$ 897	\$ 902	(0.6) %	\$ 2,676	\$ 2,659	0.6 %
Gross profit	357	351	1.7 %	1,055	1,014	4.0 %
Gross margin	39.8%	38.9%	90 bp	39.4%	38.1%	130 bp
Operating expenses excluding restructuring and realignment costs and special charges	226	227	(0.4) %	711	690	3.0 %
Expense to revenue ratio	25.2%	25.2%	— bp	26.6%	25.9%	70 bp
Restructuring and realignment costs	12	4	200.0 %	32	16	100.0 %
Special charges	10	—	NM	15	1	NM
Total operating expenses	248	231	7.4 %	758	707	7.2 %
Operating income	109	120	(9.2) %	297	307	(3.3) %
Operating margin	12.2%	13.3%	(110) bp	11.1%	11.5%	(40) bp
Interest and other non-operating expense, net	14	13	7.7 %	47	41	14.6 %
Gain on sale of businesses	—	—	NM	—	9	NM
Income tax expense	22	19	15.8 %	40	49	(18.4) %
Tax rate	22.9%	17.4%	550 bp	16.0%	17.6%	(160) bp
Net income	\$ 73	\$ 88	(17.0) %	\$ 210	\$ 226	(7.1) %

NM - Not meaningful percentage change

### Revenue

Revenue generated during the three and nine months ended September 30, 2016 was \$897 million, reflecting a decrease of 0.6%, and \$2,676 million, reflecting an increase of 0.6%, respectively, compared to the same prior year periods. On a constant currency basis, revenue grew 1.0% and 2.7% for the three and nine months ended September 30, 2016. These increases reflect additional revenue from our recent acquisitions, as well as strong organic growth within western Europe, particularly in the United Kingdom, and organic growth in the United States for both periods. The Asia Pacific region also contributed to the organic growth in both periods, particularly in India and Hong Kong. The organic growth in the quarter was offset largely by declines in the Middle East and Latin America.

The following table illustrates the impact from organic growth, recent acquisitions, and foreign currency translation in relation to revenue during the three and nine months ended September 30, 2016:

(In millions)	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	Change	% Change	Change	% Change
2015 Revenue	\$ 902		\$ 2,659	
Organic growth	1	0.1 %	46	1.7 %
Acquisitions	8	0.9 %	25	1.0 %
Constant currency	9	1.0 %	71	2.7 %
Foreign currency translation (a)	(14)	(1.6)%	(54)	(2.1)%
Total change in revenue	(5)	(0.6)%	17	0.6 %
2016 Revenue	\$ 897		\$ 2,676	

(a) Foreign currency translation impact primarily due to fluctuations in the value of the British Pound, Argentine Peso, Chinese Yuan, South African Rand, Canadian Dollar and Norwegian Krone against the U.S. Dollar.



The following table summarizes revenue by segment:

	Three Months Ended				Nine Months Ended			
	September 30,				September 30,			
(In millions)	2016	2015	Change	Constant Currency Change	2016	2015	Change	Constant Currency Change
Water Infrastructure	\$ 554	\$ 551	0.5 %	2.2 %	\$ 1,634	\$ 1,602	2.0 %	4.6 %
Applied Water	343	351	(2.3)%	(0.9)%	1,042	1,057	(1.4)%	(0.2)%
<b>Total</b>	<b>\$ 897</b>	<b>\$ 902</b>	<b>(0.6)%</b>	<b>1.0 %</b>	<b>\$ 2,676</b>	<b>\$ 2,659</b>	<b>0.6 %</b>	<b>2.7 %</b>

#### Water Infrastructure

Water Infrastructure revenue increased \$3 million, or 0.5% for the third quarter of 2016 (2.2% increase at constant currency) and increased \$32 million, or 2.0%, for the nine months ended September 30, 2016 (4.6% increase at constant currency) compared to the respective 2015 periods. Revenue was negatively impacted by \$9 million and \$41 million due to foreign currency translation for the three and nine months ended September 30, 2016. The change at constant currency was driven by organic growth of \$4 million, or 0.7% in the third quarter and \$48 million or 3.0% for the nine months ended September 30, 2016 due to continued strength in the public utility end market, reflecting a strong recovery in the United States, AMP 6 cycle growth in the United Kingdom and project activity from infrastructure investments in India. This growth was partially offset by industrial market declines, primarily due to continued decreases in dewatering applications in the oil and gas and mining markets. Additionally, revenue increased by \$8 million and \$25 million for the three and nine months ended September 30, 2016 due to our recent acquisitions.

From an application perspective for the third quarter of 2016, organic revenue grew in transport and treatment applications while test applications declined. Organic revenue performance from transport applications was driven by public utility strength in the United States due to improved backlog execution, AMP 6 cycle growth in the United Kingdom and increased infrastructure projects in India. These gains were partially offset by declines in industrial dewatering applications from weakness in the oil and gas and mining markets and weak demand in the Middle East in public utility, due to lower oil revenue and the lapping of a large project in 2015. Revenue from treatment applications was also driven by public utility strength, primarily in the United States, mainly due to strong backlog execution and project deliveries. These increases were partially offset by non-repeat prior year industrial projects. Revenue from test applications declined mainly due to a decline in Latin America as we lapped a large prior year project and in the United States, primarily due to decreased government spending as well as weak oil and gas markets.

For the nine months ended September 30, 2016, organic revenue grew in transport and treatment applications while test applications declined. Organic revenue performance from transport applications was driven by public utility strength in the United States due to improved backlog execution, increased infrastructure projects, market strength and share gains in the water and wastewater pump market and in India from a large water circulation project as well as public utility strength in western Europe, primarily driven by the growth attributable to the AMP 6 cycle in the United Kingdom. These gains were partially offset by declines in industrial dewatering applications from weakness in the oil and gas and mining markets. Revenue from treatment applications was also driven by public utility strength, primarily due to strong backlog execution in the United States, large project deliveries in the emerging markets and public utility strength in western Europe, primarily in Germany and the United Kingdom. Revenue from test applications declined mainly due to weakness in the United States primarily as a result of lower government agency spending and in Latin America due to lapping a large prior year project.

## *Applied Water*

Applied Water revenue declined \$8 million, or 2.3%, during the third quarter of 2016 (0.9% decline at constant currency) and declined \$15 million, or 1.4%, for the nine months ended September 30, 2016 (0.2% decline at constant currency) compared to the respective 2015 periods. Revenue was negatively impacted by \$5 million and \$13 million for the three and nine months ended September 30, 2016, respectively, due to foreign currency translation. The decline in the third quarter at constant currency was driven by a decline in the industrial end market partially offset by growth in the commercial and residential end markets. For the nine months ended September 30, 2016 declines at constant currency in the residential and industrial end markets were partially offset by growth in the commercial end markets.

From an application perspective for the third quarter of 2016, declines in the industrial water application were due to continued weakness in the oil and gas and food and beverage sectors in the United States which was partially offset by strength in general industrial applications in Europe and Latin America. Commercial building services revenue grew primarily due to continued strength in western Europe, partially offset by slow downs in the United States. Revenue from residential building services mainly increased in western Europe and the United States due to increased promotional activity, groundwater business recovery and favorable weather conditions. Revenue from agricultural applications was flat for the quarter.

For the nine months ended September 30, 2016, organic revenue grew in the building services applications. Building services growth was driven by strong commercial building services revenue due to market share gains from new products in western Europe, partially offset by declines within the residential building services primarily in Asia Pacific and the Middle East due to market softness and project delays. Growth from building services was more than offset by declines in the industrial water and agricultural applications. The industrial water decline was mainly due to the continued weakness in the oil and gas sector in the United States in addition to softness in Asia Pacific. These declines were partially offset by strength in western Europe due to several large projects combined with strength in general industrial applications. Agricultural applications declined in the United States primarily due to market weakness and unfavorable weather conditions.

## *Orders / Backlog*

Orders received during the third quarter of 2016 were \$946 million, an increase of \$7 million, or 0.7%, over the prior year (2.3% increase at constant currency). Orders received during the nine months ended September 30, 2016 were \$2,757 million, a decrease of \$41 million, or 1.5%, from the prior year (0.6% increase at constant currency). Organic order growth increased 1.3% and decreased 0.2% for the three and nine months ended September 30, 2016, respectively.

Water Infrastructure segment orders for the quarter increased \$14 million, or 2.4%, to \$604 million (3.9% increase at constant currency) as compared to the prior year. The increase in orders at constant currency consisted of an increase in organic orders of 2.2% and an increase in orders of 1.7% from recent acquisitions. Organic order growth in the quarter was predominately due to increases in the treatment applications as a result of a large ozone project in China as well as an increase in orders in China in test applications. Additionally, while orders in the transport applications were essentially flat, there was a large custom pump order awarded during the quarter in India, which offset a similar large project order in the prior year.

Water Infrastructure segment orders for the nine months ended September 30, 2016 decreased \$37 million, or 2.1%, to \$1,700 million (0.4% increase at constant currency) as compared to the same prior year period. The increase in orders at constant currency consisted of an increase in organic orders of 1.0%, more than offset by an increase in orders of 1.4% from recent acquisitions. The decrease in organic orders was mainly due to declines within transport applications, primarily due to decreased dewatering orders impacted by the continued weakness in oil and gas, as well as the lapping of a large order in Latin America in 2015. These decreases were partially offset by order strength in Europe and the Nordics. Treatment orders decreased as well, particularly in the United States, partially offset by the aforementioned large ozone project in China.

Applied Water segment orders for the quarter decreased \$7 million, or 2.0%, to \$342 million (0.3% decrease at constant currency). The decrease at constant currency was due to project delays in commercial building services in the United States, partially offset by order strength in Europe.

For the nine months ended September 30, 2016 Applied Water segment orders decreased \$4 million or 0.4%, to \$1,057 million (1.0% increase at constant currency). This increase at constant currency is due to organic order

growth driven by strength in Europe from new product launches that was partially offset by project delays and weakness in commercial building services in the United States.

Delivery schedules vary from customer to customer based upon their requirements. Typically, large projects require longer lead production cycles and delays can occur from time to time. Total backlog was \$775 million at September 30, 2016, a decrease of \$37 million or 4.6% as compared to September 30, 2015 and an increase of \$59 million or 8.2%, as compared to December 31, 2015. We anticipate that over 55% of the backlog at September 30, 2016 will be recognized as revenue in the remainder of 2016.

### **Gross Margin**

Gross margin as a percentage of revenue increased to 39.8% and 39.4% for the three and nine months ended September 30, 2016, compared to 38.9% and 38.1%, respectively, for the comparative 2015 periods. The gross margin increases were primarily due to benefits realized from cost saving initiatives through global sourcing and continuous improvement initiatives which more than offset cost inflation.

### **Operating Expenses**

The following table presents operating expenses for the three and nine months ended September 30, 2016 and 2015:

(In millions)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2016	2015	Change	2016	2015	Change
Selling, general and administrative expenses ("SG&A")	\$ 219	\$ 207	5.8 %	\$ 665	\$ 631	5.4 %
SG&A as a % of revenue	24.4%	22.9%	150 bp	24.9%	23.7%	120 bp
Research and development expenses ("R&D")	23	23	— %	75	71	5.6 %
R&D as a % of revenue	2.6%	2.5%	10 bp	2.8%	2.7%	10 bp
Restructuring charges	6	1	500.0 %	18	5	260.0 %
Operating expenses	\$ 248	\$ 231	7.4 %	\$ 758	\$ 707	7.2 %
Expense to revenue ratio	27.6%	25.6%	200 bp	28.3%	26.6%	170 bp

### **Selling, General and Administrative Expenses**

SG&A increased by \$12 million to \$219 million or 24.4% of revenue in the third quarter of 2016, as compared to \$207 million or 22.9% of revenue in the comparable 2015 period; and increased \$34 million to \$665 million or 24.9% of revenue in the nine months ended September 30, 2016, as compared to \$631 million or 23.7% of revenue for the nine months ended 2015. The increase in SG&A expenses includes \$10 million and \$13 million related to initial acquisition and integration costs for the three and nine months ended September 30, 2016, respectively. The remaining increases in SG&A expenses were primarily due to additional operating expenses from recent acquisitions, investments in regional sales channels and operational capabilities and inflation, which were partially offset by savings from restructuring actions.

### **Research and Development Expenses**

R&D spending was \$23 million or 2.6% of revenue in the third quarter of 2016 as compared to \$23 million or 2.5% of revenue in the comparable period of 2015; and was \$75 million or 2.8% of revenue in the nine months ended September 30, 2016 as compared to \$71 million or 2.7% of revenue in the comparable period of 2015. The increase in R&D spending for the nine months ended September 30, 2016 was primarily due to investments in new products and technology within both segments.

### **Restructuring Charges**

During the three and nine months ended September 30, 2016, we recognized restructuring charges of \$6 million and \$18 million, respectively. We incurred these charges related to actions taken in 2016 primarily in an effort to reposition our European and North American businesses to optimize our cost structure and improve our operational efficiency and effectiveness. The charges included the reduction of headcount and consolidation of facilities within our Applied Water and Water Infrastructure segments, as well as Corporate headcount reductions. Included in the charges recorded during the three and nine months ended September 30, 2016 were \$1 million

related to actions commenced in prior years.

During the three and nine months ended September 30, 2015, we recognized restructuring charges of \$1 million and \$5 million, respectively. We incurred these charges related to actions taken in 2015 primarily in an effort to reposition our European and North American businesses to optimize our cost structure and improve our operational efficiency and effectiveness. These charges related to the reduction in structural costs, including the reduction of headcount and consolidation of facilities within our Water Infrastructure segment.

Total expected costs associated with actions that commenced during the nine months ended September 30, 2016 are approximately \$20 million for Water Infrastructure, approximately \$6 million for Applied Water, and approximately \$2 million for Corporate. Related to these actions Water Infrastructure incurred \$11 million, Applied Water incurred \$4 million, and Corporate incurred \$2 million during the nine months ended September 30, 2016. These costs primarily consist of severance charges. We currently expect activity related to these actions to continue through the end of 2017 with the exception of the Corporate actions, which are substantially complete. As a result of actions initiated during the nine months ended September 30, 2016, we estimate net savings of approximately \$9 million in 2016 and annual future net savings beginning in 2017 of approximately \$23 million.

We expect to incur approximately \$30 million in restructuring costs for the full year, which contemplates additional actions beyond those discussed above. As a result of all of the actions taken and expected to be taken in 2016, we anticipate approximately \$9 million of total net savings to be realized during 2016.

### ***Operating Income***

We generated operating income of \$109 million (margin of 12.2%) during the third quarter of 2016, an \$11 million decrease compared to \$120 million (margin of 13.3%) in 2015. Restructuring and realignment costs and special charges which consist of initial acquisition and integration costs, increased \$8 million and \$10 million, respectively, in the third quarter as compared to the prior year. Adjusted operating income was \$131 million (margin of 14.6%) for the third quarter of 2016 as compared to \$124 million (margin of 13.7%) in 2015. These increases in adjusted operating margin were primarily due to increased cost reductions and volume leverage which were partially offset by cost inflation, strategic investments and unfavorable mix.

We generated operating income of \$297 million (margin of 11.1%) during the nine months ended September 30, 2016, a \$10 million decrease compared to \$307 million (margin of 11.5%) in 2015. Restructuring and realignment costs and special charges which consist mostly of initial acquisition and integration costs, increased \$16 million and \$14 million, respectively, as compared to the nine months ended 2015. Adjusted operating income was \$344 million (margin of 12.9%) for the nine months ended September 30, 2016 as compared to \$324 million (margin of 12.2%) in 2015. These increases in adjusted operating margin were driven by the same dynamics impacting the increase for the third quarter.

The table below provides a reconciliation of the total and each segment's operating income to adjusted operating income, and a calculation of the corresponding adjusted operating margin:

(In millions)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2016	2015	Change	2016	2015	Change
<b>Water Infrastructure</b>						
Operating income	\$ 79	\$ 83	(4.8) %	\$ 203	\$ 195	4.1 %
Operating margin	14.3%	15.1%	(80) bp	12.4%	12.2%	20 bp
Restructuring and realignment costs	9	2	350.0 %	21	11	90.9 %
Special charges	—	—	NM	5	1	400.0 %
Adjusted operating income	\$ 88	\$ 85	3.5 %	\$ 229	\$ 207	10.6 %
Adjusted operating margin	15.9%	15.4%	50 bp	14.0%	12.9%	110 bp
<b>Applied Water</b>						
Operating income	\$ 50	\$ 46	8.7 %	\$ 140	\$ 143	(2.1) %
Operating margin	14.6%	13.1%	150 bp	13.4%	13.5%	(10) bp
Restructuring and realignment costs	3	2	50.0 %	9	5	80.0 %
Adjusted operating income	\$ 53	\$ 48	10.4 %	\$ 149	\$ 148	0.7 %
Adjusted operating margin	15.5%	13.7%	180 bp	14.3%	14.0%	30 bp
<b>Corporate and other</b>						
Operating loss	\$ (20)	\$ (9)	122.2 %	\$ (46)	\$ (31)	48.4 %
Restructuring and realignment costs	—	—	NM	2	—	NM
Special charges	10	—	NM	10	—	NM
Adjusted operating loss	\$ (10)	\$ (9)	11.1 %	\$ (34)	\$ (31)	9.7 %
<b>Total Xylem</b>						
Operating income	\$ 109	\$ 120	(9.2) %	\$ 297	\$ 307	(3.3) %
Operating margin	12.2%	13.3%	(110) bp	11.1%	11.5%	(40) bp
Restructuring and realignment costs	12	4	200.0 %	32	16	100.0 %
Special charges	10	—	NM	15	1	NM
Adjusted operating income	\$ 131	\$ 124	5.6 %	\$ 344	\$ 324	6.2 %
Adjusted operating margin	14.6%	13.7%	90 bp	12.9%	12.2%	70 bp

NM - Not meaningful percentage change

#### Water Infrastructure

Operating income for our Water Infrastructure segment decreased \$4 million, or 4.8%, for the third quarter of 2016 compared to the prior year, with operating margin also decreasing from 15.1% to 14.3%. Operating margin was negatively impacted by increased restructuring and realignment costs of \$7 million. Adjusted operating income increased \$3 million, or 3.5%, with adjusted operating margin increasing from 15.4% to 15.9%. The increase in adjusted operating margin for the third quarter was due to cost savings from global procurement and continuous improvement initiatives as well as favorable foreign currency impacts, partially offset by cost inflation and increased investment spending in growth initiatives, including new product development.

For the nine months ended September 30, 2016, operating income increased \$8 million, or 4.1%, with operating margin increasing from 12.2% to 12.4% as compared to the prior year. Operating margin was negatively impacted by increased restructuring and realignment costs of \$10 million as well as higher special charges of \$4 million, primarily from initial acquisition related costs. Adjusted operating income increased \$22 million, or 10.6%, with adjusted operating margin increasing from 12.9% to 14.0%. The increases in adjusted operating margin for the nine months ended September 30, 2016 were largely due to the same dynamics impacting the third quarter, as well as favorable volume.

#### *Applied Water*

For the third quarter of 2016 operating income for our Applied Water segment increased \$4 million, or 8.7%, with operating margin increasing from 13.1% to 14.6% as compared to the prior year. Operating margin was negatively impacted by higher restructuring and realignment changes of \$1 million. Adjusted operating income increased \$5 million, or 10.4%, with adjusted operating margin increasing from 13.7% to 15.5%. The increases in adjusted operating margin were due to cost savings from global procurement and productivity gains, partially offset by inflation, unfavorable mix and strategic investments.

For the nine months ended September 30, 2016, operating income decreased \$3 million, or 2.1%, with operating margin decreasing slightly from 13.5% to 13.4% as compared with the prior year. Operating margin was negatively impacted by higher restructuring and realignment changes of \$4 million. Adjusted operating income increased \$1 million, or 0.7%, with adjusted operating margin increasing from 14.0% to 14.3%. The increases in adjusted operating margin were due to cost savings from global procurement and productivity gains partially offset by inflation, strategic investments and unfavorable mix. Strategic investments included building emerging market product localization capabilities, sales channel development and new product development.

#### *Corporate and other*

Operating expense for corporate and other increased \$11 million, (increased \$1 million on an adjusted basis) for the third quarter of 2016 as compared to the prior year, primarily due to \$10 million of transaction and integration costs incurred related to the Sensus acquisition. For the nine months ended September 30, 2016 operating expense increased \$15 million, (increased \$3 million on an adjusted basis) compared with the prior year. These increases in adjusted operating expense were primarily due to the aforementioned \$10 million of transaction and integration costs incurred related to the Sensus acquisition, higher restructuring and realignment charges of \$2 million and increased compensation cost.

#### **Interest Expense**

Interest expense was \$16 million and \$50 million for the three and nine months ended September 30, 2016, and \$13 million and \$41 million for the three and nine months ended September 30, 2015, respectively, primarily related to the interest on our Senior Notes, including a make-whole interest premium of \$7 million that was paid in the second quarter of 2016 and fees of \$4 million related to the Bridge Facility entered into for the Sensus acquisition. See "Liquidity and Capital Resources" for further details.

#### **Income Tax Expense**

The income tax provision for the three months ended September 30, 2016 was \$22 million resulting in an effective tax rate of 22.9%, compared to \$19 million resulting in an effective tax rate of 17.4% for the same period in 2015. The income tax provision for the nine months ended September 30, 2016 was \$40 million resulting in an effective tax rate of 16.0%, compared to \$49 million resulting in an effective tax rate of 17.6% for the same period in 2015. The variance in the effective tax rates for the three months ended September 30, 2016 was primarily due to changes in the geographic mix of earnings. For the nine months ended September 30, 2016, the variance in the effective tax rate was primarily due to the release of an unrecognized tax benefit in 2016 as a result of the effective settlement of a tax examination offset in part by the establishment of a valuation allowance in 2016.

## Other Comprehensive Income (Loss)

OCI was a loss of \$3 million for the three months ended September 30, 2016 compared to a loss of \$31 million for the same period in 2015. This change was driven by favorable foreign currency translation impacts primarily due to the strengthening of the Euro and Australian Dollar against the U.S. Dollar as compared to the weakening of these currencies against the U.S. Dollar in the same period in 2015. For the nine months ended September 30, 2016 OCI was a loss of \$17 million as compared to a loss of \$130 million for the same period in 2015. This change was driven almost entirely from favorable foreign currency translation impacts primarily due to significantly less weakening of the Swedish Krona against the U.S. Dollar for the first nine months of 2016 as compared to the same period in 2015.

## Liquidity and Capital Resources

The following table summarizes our sources and (uses) of cash:

(In millions)	Nine Months Ended September 30,		
	2016	2015	Change
Operating activities	\$ 274	\$ 260	\$ 14
Investing activities	(155)	(74)	(81)
Financing activities	(150)	(194)	44
Foreign exchange (a)	10	(44)	54
Total	\$ (21)	\$ (52)	\$ 31

(a) The impact is primarily due to the strengthening of the Euro against the U.S. Dollar.

## Sources and Uses of Liquidity

### Operating Activities

During the nine months ended September 30, 2016, net cash provided by operating activities increased by \$14 million as compared to the same prior year period. The year-over-year increase was primarily due to a government repayment of a foreign value-added tax receivable and timing of payroll related accruals, which were partially offset by an increased use of working capital.

### Investing Activities

Cash used in investing activities was \$155 million for the nine months ended September 30, 2016 as compared to \$74 million in the comparable prior year period. This increase was mainly driven by \$70 million spent on our acquisition of Tideland Signal Corporation. Additionally, capital expenditures increased by \$12 million as compared to the prior year due to increased investments in our factories, primarily in Dubai, China and Sweden.

### Financing Activities

Cash used in financing activities was \$150 million for the nine months ended September 30, 2016 as compared to \$194 million in the comparable prior year period. The net decrease in cash used was mostly due to a decrease in share repurchase activity of \$125 million. This decrease was largely offset by net repayments of debt (see "Senior Notes" for further information) and higher dividend payments.

## Funding and Liquidity Strategy

Our ability to fund our capital needs depends on our ongoing ability to generate cash from operations, and access to bank financing and the capital markets. Historically, we have generated operating cash flow sufficient to fund our primary cash needs centered on operating activities, working capital, capital expenditures, and strategic investments. If our cash flows from operations are less than we expect, we may need to incur debt or issue equity. From time to time, we may need to access the long-term and short-term capital markets to obtain financing. Our access to, and the availability of, financing on acceptable terms and conditions in the future will be impacted by many factors, including: (i) our credit ratings or absence of a credit rating, (ii) the liquidity of the overall capital markets, and (iii) the current state of the economy. There can be no assurance that such financing will be available to us on acceptable terms or that such financing will be available at all.

Our global funding requirements are continually monitored with appropriate strategies executed to ensure liquidity needs are met cost effectively. Based on our current global cash positions, cash flows from operations and access to the commercial paper markets, we believe there is sufficient liquidity to meet our funding requirements. In addition, our existing committed credit facilities and access to the public debt markets would provide further liquidity if required.

We anticipate that our present sources of funds, including funds from operations and additional borrowings, will provide us with sufficient liquidity and capital resources to meet our liquidity and capital needs in both the United States and outside of the United States over the next twelve months.

#### *Senior Notes*

On September 20, 2011, we issued 3.550% Senior Notes of \$600 million aggregate principal amount due September 2016 and 4.875% Senior Notes of \$600 million aggregate principal amount due October 2021. On March 11, 2016, we issued 2.250% Senior Notes of €500 million aggregate principal amount due 2023.

The Senior Notes include covenants which restrict our ability, subject to exceptions, to incur debt secured by liens and engage in sale and leaseback transactions, as well as provide for customary events of default (subject, in certain cases, to receipt of notice of default and/or customary grace and cure periods). We may redeem the Senior Notes, as applicable, in whole or in part, at any time at a redemption price equal to the principal amount of the Senior Notes to be redeemed, plus a make-whole premium. We may redeem all or a portion of the Senior Notes due 2023 at our option at any time on or after December 11, 2022 (three months prior to their maturity), at a redemption price equal to 100% of the principal amount, plus accrued and unpaid interest to the redemption date. We may also redeem all, but not part, of the Senior Notes due 2023 in the event of specified tax events as described in the applicable Senior Notes indenture. If a change of control triggering event (as defined in the applicable Senior Notes indenture) occurs, we will be required to make an offer to purchase the Senior Notes at a price equal to 101% of their principal amount plus accrued and unpaid interest to the date of repurchase. As of September 30, 2016, we were in compliance with all covenants for the Senior Notes.

Interest on the Senior Notes due 2016 was payable on March 20 and September 20 of each year. Interest on the Senior Notes due 2021 is payable on April 1 and October 1 of each year. Interest on the Senior Notes due 2023 is payable on March 11 of each year.

On April 11, 2016, our Senior Notes due 2016 were settled for a total of \$607 million which included make-whole interest expense of \$7 million. The Company recorded this loss on extinguishment of the debt in the second quarter of 2016 as interest expense.

On August 15, 2016, we entered into a \$1.3 billion senior unsecured bridge facility (the "Bridge Facility"). The Bridge Facility was put in place to finance the Sensus acquisition and to pay the related fees and expenses to the extent we were unable to finance the Sensus acquisition through available cash on hand, a new term loan and the issuance of the Notes (refer to Note 15 for further information on the issuance of the Notes). The Bridge Facility was terminated on October 31, 2016 in connection with the Sensus acquisition.

On October 11, 2016, we issued 3.250% Senior Notes of \$500 million aggregate principal amount due October 2026 (the "Senior Notes due 2026") and 4.375% Senior Notes of \$400 million aggregate principal amount due October 2046 (the "Senior Notes due 2046" and, together with the Senior Notes due 2026, the "Notes"). Interest on the Notes is payable semiannually on May 1 and November 1 of each year beginning on May 1, 2017.

We used the net proceeds of the Notes, together with cash on hand, proceeds from issuances under our existing commercial paper program and borrowings under the Term Loan (as described below), to partially fund the acquisition of the direct and indirect subsidiaries of Sensus (other than Sensus Industries Limited) (refer to Note 3 for further information on the Sensus acquisition).

#### *Term Loan*

On October 24, 2016, the Company's subsidiary, Xylem Europe GmbH (the "borrower") entered into a 12-month €150 million (approximately \$164 million as of October 28, 2016) term loan facility (the "Term Facility") the terms of which are set forth in a term loan agreement, among the borrower, the Company, as parent guarantor and ING Bank. The Company has entered into a parent guarantee in favor of ING Bank also dated October 24, 2016 to secure all present and future obligations of the borrower under the Term Loan Agreement. The Term Facility was used to partially fund the Sensus Acquisition. The Term Facility will mature on October 27, 2017. The Term Facility bears interest at EURIBOR plus 0.35%. The Agreement contains certain representations and warranties,



certain affirmative covenants, certain negative covenants, a financial covenant, certain conditions and events of default that are customarily required for similar financings.

#### *Finance Contract with the European Investment Bank*

On October 28, 2016, the Company entered into a Finance Contract (the "Finance Contract") with the European Investment Bank (the "EIB"). The Company's wholly owned subsidiaries in Luxembourg, Xylem Holdings S.á r.l. and Xylem International S.á r.l., are the borrowers under the Finance Contract and Xylem Inc. is the Guarantor. The Finance Contract provides for up to €105 million (approximately \$115 million as of October 28, 2016) to finance research, development and innovation projects in the field of sustainable water and wastewater solutions during the period from 2017 through 2019 in Sweden, Germany, Italy, UK, Hungary and Austria. The Company has unconditionally guaranteed the performance of the borrowers under the Finance Contract.

Under the Finance Contract, the borrowers are able to draw loans on or before April 28, 2018, with a maturity of no longer than 11 years. The Finance Contract contains the same leverage ratio as the Credit Facility. The Finance Contract also contains limitations on, among other things, incurring debt, granting liens, and entering into sale and leaseback transactions. In addition, the Finance Contract contains other terms and conditions, such as customary representations and warranties, additional covenants and customary events of default.

The Finance Contract provides for Fixed Rate loans and Floating Rate loans. The interest rate per annum applicable to Fixed Rate loans is at a fixed percentage rate per annum specified by the EIB which includes the applicable margin. The interest rate per annum applicable to Floating Rate loans is at the rate determined by reference to EURIBOR for loans drawn in Euros and LIBOR for loans drawn in Pounds Sterling or U.S. Dollars, plus an applicable spread specified by the EIB which includes the applicable margin. The applicable margin is 59 basis points (0.59%). We have not drawn any funds under the Finance Contract.

#### *Credit Facility*

Effective March 27, 2015, Xylem entered into a Five-Year Revolving Credit Facility with Citibank, N.A., as administrative agent, and a syndicate of lenders. The Credit Facility provides for an aggregate principal amount of up to \$600 million of: (i) revolving extensions of credit outstanding at any time and (ii) the issuance of letters of credit in a face amount not in excess of \$100 million outstanding at any time. The Credit Facility provides for increases of up to \$200 million for a possible maximum total of \$800 million in aggregate principal amount at our request and with the consent of the institutions providing such increased commitments.

At our election, the interest rate per annum applicable to the revolving loans will be based on either (i) a Eurodollar rate determined by reference to LIBOR, adjusted for statutory reserve requirements, plus an applicable margin or (ii) a fluctuating rate of interest determined by reference to the greatest of: (a) the prime rate of Citibank, N.A., (b) the U.S. Federal funds effective rate plus half of 1% or (c) the Eurodollar rate determined by reference to LIBOR, adjusted for statutory reserve requirements, in each case, plus an applicable margin.

In accordance with the terms of an amendment to the Credit Facility dated August 30, 2016, we may not exceed a maximum leverage ratio of 4.00 to 1.00 (based on a ratio of total debt to earnings before interest, taxes, depreciation and amortization) for a period of 12-months following the Sensus acquisition and a maximum leverage ratio of 3.50 to 1.00 through the rest of the term. The Credit Facility also contains limitations on, among other things, incurring secured debt, granting liens, entering into sale and leaseback transactions, mergers, consolidations, liquidations, dissolutions and sales of assets. In addition, the Credit Facility contains other terms and conditions such as customary representations and warranties, additional covenants and customary events of default. As of September 30, 2016, we were in compliance with all covenants.

As of September 30, 2016, the Credit Facility was undrawn.

#### *Commercial Paper*

Our commercial paper program generally serves as a means of short-term funding and has a combined outstanding limit of \$600 million inclusive of the Five-Year Revolving Credit Facility. As of September 30, 2016, \$20 million of the Company's \$600 million commercial paper program was outstanding at a weighted average interest rate of 0.75%. We will periodically borrow under this program and may borrow under it in future periods.

#### *Research and Development Facility Agreement*

On December 3, 2015, the Company amended and restated its Risk Sharing Finance Facility Agreement (the "R&D Facility Agreement") with The European Investment Bank (the "EIB") to amend the maturity date. The

facility provides an aggregate principal amount of up to €120 million (approximately \$135 million) to finance research projects and infrastructure development in the European Union. The Company's wholly owned subsidiaries in Luxembourg, Xylem Holdings S.á r.l. and Xylem International S.á r.l., are the borrowers under the R&D Facility Agreement. The obligations of the borrowers under the R&D Facility Agreement are guaranteed by the Company under an Amended and Restated Deed of Guarantee, dated as of December 4, 2013, in favor of the EIB. The funds are available during the period from 2013 through 2016 at the Company's facilities in Sweden, Germany, Italy, the United Kingdom, Austria, Norway and Hungary.

Under the R&D Facility Agreement, the borrower was able to draw loans on or before March 31, 2016 with a maturity of no longer than 12 years. The R&D Facility Agreement provides for Fixed Rate loans and Floating Rate loans. The interest rate per annum applicable to Fixed Rate loans is at a fixed percentage rate per annum specified by the EIB which includes the applicable margin. The interest rate per annum applicable to Floating Rate loans is at the rate determined by reference to EURIBOR for loans drawn in Euros and LIBOR for loans drawn in Pounds Sterling or U.S. Dollars, plus an applicable spread specified by the EIB which includes the applicable margin. The applicable margin for both Fixed Rate loans and Floating Rate loans is determined by reference to the credit rating of the Company.

In accordance with the terms of the R&D Facility Agreement, we may not exceed a maximum leverage ratio of 3.50 to 1.00 (based on a ratio of total debt to earnings before interest, taxes, depreciation and amortization) throughout the term. The R&D Facility Agreement also contains limitations on, among other things, incurring debt, granting liens, and entering into sale and leaseback transactions. In addition, the R&D Facility Agreement contains other terms and conditions, such as customary representations and warranties, additional covenants and customary events of default. As of September 30, 2016, we were in compliance with all covenants.

As of September 30, 2016, \$42 million was outstanding under the R&D Facility Agreement. Although the borrowing term for this arrangement is up to five years, we have classified it as short-term debt on our Condensed Consolidated Balance Sheets since we intend to repay this obligation in less than a year.

#### *Non-U.S. Operations*

We generated approximately 59% of our revenue from non-U.S. operations for the three and nine months ended September 30, 2016 and 2015, respectively. As we continue to grow our operations in the emerging markets and elsewhere outside of the United States, we expect to continue to generate significant revenue from non-U.S. operations and we expect our cash will be predominately held by our foreign subsidiaries. We expect to manage our worldwide cash requirements considering available funds among the many subsidiaries through which we conduct business and the cost effectiveness with which those funds can be accessed. We may transfer cash from certain international subsidiaries to the U.S. and other international subsidiaries when we believe it is cost effective to do so. We continually review our domestic and foreign cash profile, expected future cash generation and investment opportunities, which support our current designation of a portion of these funds as being indefinitely reinvested and reassess whether there is a demonstrated need to repatriate funds held internationally to support our U.S. operations. If, as a result of our review, it is determined that all or a portion of the funds may be needed for our operations in the United States, we may be required to accrue additional U.S. taxes. As of September 30, 2016, our foreign subsidiaries were holding \$637 million in cash or marketable securities. On October 31, 2016, \$375 million of this cash was used to acquire certain foreign subsidiaries of Sensus and Visenti.

#### **Critical Accounting Estimates**

Our discussion and analysis of our results of operations and capital resources are based on our condensed consolidated financial statements, which have been prepared in conformity with GAAP. The preparation of these condensed consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses and the disclosure of contingent assets and liabilities. We believe the most complex and sensitive judgments, because of their significance to the condensed consolidated financial statements, result primarily from the need to make estimates about the effects of matters that are inherently uncertain. Management's Discussion and Analysis of Financial Condition and Results of Operations in the 2015 Annual Report describes the critical accounting estimates used in preparation of the condensed consolidated financial statements. Actual results in these areas could differ from management's estimates. There have been no significant changes in the information concerning our critical accounting estimates as stated in our 2015 Annual Report.

### **New Accounting Pronouncements**

See Note 2, "Recently Issued Accounting Pronouncements," to the condensed consolidated financial statements for a complete discussion of recent accounting pronouncements. We are currently evaluating the impact of certain recently issued guidance on our financial condition and results of operations in future periods.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

There has been no material change in the information concerning market risk as stated in our 2015 Annual Report.

**ITEM 4. CONTROLS AND PROCEDURES**

Our management, with the Chief Executive Officer and Chief Financial Officer of the Company, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this quarterly report. Any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. Based on such evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of the period covered by this report, the Company's disclosure controls and procedures were effective at the reasonable assurance level.

There have been no changes in our internal control over financial reporting during the fiscal quarter covered by this quarterly report that have materially affected or are reasonably likely to materially affect the Company's internal control over financial reporting.

## PART II

### ITEM 1. LEGAL PROCEEDINGS

From time to time, we are involved in legal proceedings that are incidental to the operation of our businesses. Some of these proceedings seek remedies relating to environmental matters, intellectual property matters, personal injury claims, employment and pension matters, government contract issues and commercial or contractual disputes, sometimes related to acquisitions or divestitures. See Note 17 "Commitments and Contingencies" to the condensed consolidated financial statements for further information and any updates.

### ITEM 1A. RISK FACTORS

There have been no material changes from the risk factors previously disclosed in our 2015 Annual Report.

### ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

The following table presents information with respect to purchases of the Company's common stock by the Company during the three months ended September 30, 2016:

(IN MILLIONS, EXCEPT PER SHARE AMOUNTS) PERIOD	TOTAL NUMBER OF SHARES PURCHASED	AVERAGE PRICE PAID PER SHARE (a)	TOTAL NUMBER OF SHARES PURCHASED AS PART OF PUBLICLY ANNOUNCED PLANS OR PROGRAMS (b)	APPROXIMATE DOLLAR VALUE OF SHARES THAT MAY YET BE PURCHASED UNDER THE PLANS OR PROGRAMS (b)
7/1/16 - 7/31/16	—	—	—	\$432
8/1/16 - 8/31/16	—	—	—	\$433
9/1/16 - 9/30/16	—	—	—	\$433

(a) Average price paid per share is calculated on a settlement basis.

(b) On August 24, 2015, our Board of Directors authorized the repurchase of up to \$500 million in shares with no expiration date. The program's objective is to deploy our capital in a manner that benefits our shareholders and maintains our focus on growth. There were no shares repurchased under this program during the three months ended September 30, 2016. There are up to \$420 million in shares that may still be purchased under this plan as of September 30, 2016.

On August 18, 2012, our Board of Directors authorized the repurchase of up to 2.0 million shares of common stock with no expiration date. The program's objective is to offset dilution associated with various Xylem employee stock plans by acquiring shares in the open market from time to time. There were no shares repurchased under this program during the three months ended September 30, 2016. There are up to 0.3 million of shares (approximately \$13 million in value) that may still be purchased under this plan as of September 30, 2016.

### ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

### ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

### ITEM 5. OTHER INFORMATION

None.

### ITEM 6. EXHIBITS

See the Exhibit Index following the signature page hereto for a list of exhibits filed as part of this report and incorporated herein by reference.

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**XYLEM INC.**

(Registrant)

/s/ E. Mark Rajkowski

\_\_\_\_\_  
E. Mark Rajkowski

Senior Vice President and Chief Financial Officer

November 1, 2016

**XYLEM INC.**  
**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>	<b>Location</b>
(2.1)	Share Purchase Agreement, dated as of August 15, 2016, by and among Xylem Inc., Xylem Luxembourg S.à r.l., Sensus Worldwide Limited, Sensus Industries Limited, and Sensus USA Inc.	Incorporated by reference to Exhibit 2.1 to Xylem Inc.'s Current Report on Form 8-K filed on August 15, 2016(CIK No. 1524472, File No. 1-35229).
(2.2)	First Amendment to Share Purchase Agreement, dated as of November 1, 2016, by and among Xylem Inc., Xylem Luxembourg S.à r.l., Sensus Worldwide Limited, Sensus Industries Limited, and Sensus USA Inc.	Incorporated by reference to Exhibit 2.2 to Xylem Inc.'s Current Report on Form 8-K filed on October 31, 2016 (CIK No. 1524472, File No. 1-35229).
(3.1)	Third Amended and Restated Articles of Incorporation of Xylem Inc.	Incorporated by reference to Exhibit 3.1 of Xylem Inc.'s Form 10-Q filed on July 29, 2014 (CIK No. 1524472, File No. 1-35229).
(3.2)	Amended and Restated By-laws of Xylem Inc.	Incorporated by reference to Exhibit 3.1 of Xylem Inc.'s Form 8-K filed on February 25, 2016 (CIK No. 1524472, File No. 1-35229).
(4.1)	Senior Indenture, dated March 11, 2016, by and between the Company and Deutsche Bank Trust Company Americas, as trustee.	Incorporated by reference to Exhibit 4.1 of Xylem Inc.'s Form 8-K filed on March 11, 2016 (CIK No. 1524472, File No. 1-35229).
(4.2)	Third Supplemental Indenture, dated October 11, 2016, by and between the Company and Deutsche Bank Trust Company Americas, as trustee.	Incorporated by reference to Exhibit 4.1 of Xylem Inc.'s Form 8-K filed on October 11, 2016 (CIK No. 1524472, File No. 1-35229).
(4.3)	Form of 3.250% Senior Notes due 2026	Incorporated by reference to Exhibit 4.1 of Xylem Inc.'s Form 8-K filed on October 11, 2016 (CIK No. 1524472, File No. 1-35229).
(4.4)	Form of 4.375% Senior Notes due 2046	Incorporated by reference to Exhibit 4.1 of Xylem Inc.'s Form 8-K filed on October 11, 2016 (CIK No. 1524472, File No. 1-35229).
(10.1)	Amendment No.1, dated as of August 30, 2016, to the Five-Year Revolving Credit Facility, dated as of March 27, 2015, among Xylem Inc., the lenders named therein and Citibank N.A. as Administrative Agent.	Filed herewith.
(10.2)	Finance Contract, dated October 28,2016, between Xylem Holdings S.a.r.l. and Xylem International S.a.r.l., as borrowers, Xylem Inc., as guarantor and the European Investment Bank.	Filed herewith.
(10.3)	Term Loan Agreement, dated as of October 24, 2016 among Xylem Europe GmbH, as borrower, Xylem Inc., as parent guarantor and ING Bank, as lender (including Form of Parent Guarantee).	Incorporated by reference to Exhibit 10.1 of Xylem Inc.'s Form 8-K filed on October 28, 2016 (CIK No. 1524472, File No. 1-35229).
(11.0)	Statement Re-Computation of Per Share Earnings	Information required to be presented in Exhibit 11 is provided under "Earnings Per Share" in Note 6 to the Condensed Consolidated Financial Statements in Part I, Item 1 "Condensed Consolidated Financial Statements" of this Report in accordance with the provisions of Financial Accounting Standards Board Accounting Standards Codification 260, <i>Earnings Per Share</i> .

Exhibit Number	Description	Location
(31.1)	Certification pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	Filed herewith.
(31.2)	Certification pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	Filed herewith.
(32.1)	Certification Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	This Exhibit is intended to be furnished in accordance with Regulation S-K Item 601(b) (32) (ii) and shall not be deemed to be filed for purposes of Section 18 of the Securities Exchange Act of 1934 or incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, except as shall be expressly set forth by specific reference.
(32.2)	Certification Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	This Exhibit is intended to be furnished in accordance with Regulation S-K Item 601(b) (32) (ii) and shall not be deemed to be filed for purposes of Section 18 of the Securities Exchange Act of 1934 or incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, except as shall be expressly set forth by specific reference.
(101.0)	The following materials from Xylem Inc.'s Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2016, formatted in XBRL (Extensible Business Reporting Language): (i) Condensed Consolidated Income Statements, (ii) Condensed Consolidated Statements of Comprehensive Income, (iii) Condensed Consolidated Balance Sheets, (iv) Condensed Consolidated Statements of Cash Flows and (v) Notes to Condensed Consolidated Financial Statements	The instance document does not appear in the interactive data file because its XBRL tags are embedded within the Inline XBRL document.



**AMENDMENT NO. 1 TO THE  
CREDIT AGREEMENT**

Dated as of August 30, 2016

**AMENDMENT NO. 1 TO THE CREDIT AGREEMENT** (this “Amendment”) among XYLEM INC., an Indiana corporation (the “Company”), the banks, financial institutions and other institutional lenders party to the Credit Agreement referred to below (collectively, the “Lenders”) and CITIBANK, N.A., as agent (the “Administrative Agent”) for the Lenders.

**PRELIMINARY STATEMENTS:**

(1) The Company, the Lenders and the Administrative Agent have entered into a Five-Year Revolving Credit Facility Agreement dated as of March 27, 2015 (the “Credit Agreement”). Capitalized terms not otherwise defined in this Amendment have the same meanings as specified in the Credit Agreement.

(2) The Company and the Required Lenders have agreed to amend the Credit Agreement as hereinafter set forth.

SECTION 1. Amendments to Credit Agreement. The Credit Agreement is, effective as of the date hereof and subject to the satisfaction of the conditions precedent set forth in Section 3, hereby amended as follows:

(a) Section 1.01 is amended by inserting in the appropriate alphabetical location the new defined terms:

“Bail-In Action” has the meaning specified in Section 10.20.

“Sensus Acquisition” means the direct or indirect acquisition by the Company of Equity Interests in Sensus USA Inc., a Delaware corporation, (y) Sensus Metering Systems (Luxco 1) S.à r.l., a Luxembourg *société à responsabilité limitée* and (z) subsidiaries of Sensus USA Inc. organized under the laws of Brazil, Mexico, Chile and Canada.

“Sensus Acquisition Agreement” means that certain Share Purchase Agreement dated as of as of August 15, 2016 among Sensus Worldwide Limited, Sensus Industries Limited, Sensus USA Inc., the Company and Xylem Luxembourg S.à r.l., a Luxembourg *société à responsabilité limitée*.

“Sensus Closing Date” means the date, if any, on which the Sensus Acquisition is consummated.

(b) The definition of “Federal Funds Effective Rate” included in the definition of “Alternate Base Rate” in Section 1.01 is amended by deleting the phrase “arranged by Federal funds brokers”.

(c) The definition of “Defaulting Lender” in Section 1.01 is amended by adding to the end thereof the phrase “or a Bail-In Action”.

(d) Section 6.05 is amended in full to read as follows:

*Leverage Ratio.* At any time permit the Leverage Ratio to be greater than 3.5 to 1.00; *provided* that, for the period, if any, beginning with the Sensus Closing Date and ending on (and including) the last day of the fourth full fiscal quarter ended after the Sensus Closing Date, the Company will not permit the Leverage Ratio at any time to exceed 4.00 to 1.00.

Notwithstanding anything to the contrary set forth herein, until (and including) the earlier of (A) the Sensus Closing Date and (B) the date on which the Sensus Acquisition Agreement terminates or expires, any Indebtedness incurred by the Company or any of its Subsidiaries to finance the Sensus Acquisition shall be disregarded for the purpose of determining compliance with this Section 6.05 to the extent that, and so long as, the cash proceeds of such Indebtedness are either held in escrow on customary terms or are held by the Company or any of its Subsidiaries as unrestricted cash or cash equivalents.

(e) A new Section 10.20 is added to read as follows:

SECTION 10.20. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Loan Market Association” means the London trade association, which is the self-described authoritative voice of the syndicated loan markets in Europe, the Middle East and Africa.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 2. Conditions of Effectiveness. This Amendment shall become effective as of the date first above written when, and only when, the Administrative Agent shall have received counterparts of this Amendment executed by the Company and Lenders constituting Required Lenders.

SECTION 3. Representations and Warranties of the Company. The Company represents and warrants that (i) the representations and warranties set forth in Article III of the Credit Agreement are correct in all material respects on and as of the date hereof, as though made on and as of the date hereof (except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties are true and correct in all material respects on and as of as of such earlier date) and (ii) no Event of Default or Default has occurred and is continuing.

SECTION 4. Reference to and Effect on the Loan Documents. (a) On and after the effectiveness of this Amendment, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Credit Agreement, and each reference in the Notes and other Loan Documents to “the Credit Agreement”, “thereunder”, “thereof” or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement, as amended by this Amendment.

(b) The Credit Agreement (including, without limitation, the guarantee contained in Article VIII thereof) and the Notes and each other Loan Document, as specifically amended by this Amendment, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under the Credit Agreement or any Notes or any other Loan Document, nor constitute a waiver of any provision of the Credit Agreement or any Notes or any other Loan Document.

(d) This Amendment constitutes a Loan Document and is subject to the provisions of Section 10.07 of the Credit Agreement.

SECTION 5. Costs and Expenses. The Company agrees to pay all reasonable out-of-pocket costs and expenses of the Administrative Agent in connection with the preparation, execution, delivery and administration, modification and amendment of this Amendment (including, without limitation, the reasonable fees and expenses of counsel for the Administrative Agent) in accordance with the terms of Section 10.05 of the Credit Agreement.

SECTION 6. Execution in Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page to this Amendment by telecopier or electronic transmission (PDF) shall be effective as delivery of a manually executed counterpart of this Amendment.

SECTION 7. Governing Law. This Amendment shall be governed by, and construed in accordance with, the law of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

XYLEM INC.

By: /s/ Samir Patel

Name: Samir Patel

Title: Vice President & Treasurer

CITIBANK, N.A., as Administrative Agent

By: /s/ Susan M. Olsen

Name: Susan M. Olsen

Title: Vice President

SIGNATURE PAGE

CONSENT to Amendment No. 1 to the Five-Year Revolving Credit Facility Agreement dated as of March 27, 2015 of XYLEM INC.

Australia and New Zealand Banking Group Limited

by /s/ Robert Grillo  
Name: Robert Grillo  
Title: Director

BNP Paribas

by /s/ Juliene Pecoud-Bouvet  
Name: Juliene Pecoud-Bouvet  
Title: Vice President

by /s/ Karim Remtoula  
Name: Karim Remtoula  
Title: Vice President

Citibank, N.A.

by /s/ Maureen P. Maroney  
Name: Maureen P. Maroney  
Title: Vice President

DEUTSCHE BANK AG NEW YORK BRANCH

by /s/ Virginia Cosenza  
Name: Virginia Cosenza  
Title: Vice President

by /s/ Ross Levitsky  
Name: Ross Levitsky  
Title: Managing Director

Svenska Handelsbanken AB (publ), New York Branch

by /s/ Jonas Almhöjd  
Name: Jonas Almhöjd  
Title: Senior Vice President

by /s/ Mark Emmett  
Name: Mark Emmett  
Title: Vice President

ING Branch N.V., Dublin Branch

by /s/ Padraig Matthews  
Name: Padraig Matthews  
Title: Vice President

by /s/ Sean Hassett  
Name: Sean Hassett  
Title: Director

Intesa Sanpaolo S.p.A., New York Branch

by /s/ John J. Michalisin  
Name: John J. Michalisin  
Title: Senior Relationship Manager

by /s/ Francesco Di Mario  
Name: Francesco Di Mario  
Title: FVP & Head of Credit

JPMORGAN CHASE BANK, N.A.,

by /s/ Gene Riego de Dios  
Name: Gene Riego de Dios  
Title: Vice President

MIZUHO BANK, LTD.

by /s/ Donna DeMagistris  
Name: Donna DeMagistris  
Title: Authorized Signatory

The Bank of Tokyo-Mitsubishi UFJ, Ltd.

by /s/ Adrienne Young  
Name: Adrienne Young  
Title: Vice President

SEB AG

by /s/ Jürgen Baudisch  
Name: Jürgen Baudisch  
Title: Authorized Signatory

by /s/ Ines Walter  
Name: Ines Walter  
Title: Authorized Signatory

SOCIETE GENERALE

by /s/ Nigel Elvey

Name: Nigel Elvey

Title: Director

TD Bank, N.A.

by /s/ Christopher Matheson

Name: Christopher Matheson

Title: Director

U.S. Bank National Association

by /s/ Ken Gorski

Name: Ken Gorski

Title: Vice President

WELLS FARGO, NATIONAL ASSOCIATION

by /s/ Thomas Molitor

Name: Thomas Molitor

Title: Managing Director

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<sup>1</sup> For any Lender requiring a second signature line.



# **XYLEM WATER TECHNOLOGIES II**

## **Finance Contract**

*between the*

**European Investment Bank**

*and*

**Xylem Holdings S.à r.l.**

*as Borrower 1*

*and*

**Xylem International S.à r.l.**

*as Borrower 2*

*and*

**Xylem Inc.**

*as Guarantor*

Luxembourg and Rye Brook, NY, 28, October 2016

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**THIS CONTRACT DATED 28 OCTOBER 2016 IS MADE BETWEEN:**

The European Investment Bank having its seat at 100 blvd Konrad Adenauer, Luxembourg, L-2950 Luxembourg, represented by Hanna Karczewska, Head of Division and Timo Kiiha, Deputy Head of Division

(the "**Bank**")

of the first part;

Xylem Holdings S.à r.l. a private company with limited liability (*société à responsabilité limitée*) incorporated under the laws of the Grand Duchy of Luxembourg, registered with the Luxembourg Register of Commerce and Companies under No. B 77 533 and having its registered office at 11, Breedewues, L-1259 Senningerberg, Grand Duchy of Luxembourg, represented by Samir Patel, Manager, and Pascale Wagner, Manager

("Borrower 1")

of the second part;

Xylem International S.à r.l., a private company with limited liability (*société à responsabilité limitée*) incorporated under the laws of the Grand Duchy of Luxembourg, registered with the Luxembourg Register of Commerce and Companies No. B 144132 and having its registered office at 11, Breedewues, L-1259 Senningerberg, Grand Duchy of Luxembourg, represented by Samir Patel, Manager, and Pascale Wagner, Manager

("Borrower 2")

of the third part; and

Xylem Inc. a company incorporated in the State of Indiana, United States of America with its registered office at 1 International Drive Rye Brook, NY 10573 United States, represented by Samir Patel, Vice President & Treasurer

(the "**Guarantor**")

of the fourth part.

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## WHEREAS:

- (1) The Borrowers have stated that they are undertaking, through their direct and/or indirect subsidiaries, a project of research, development and innovation ("**RDI**") in the field of sustainable water and wastewater solutions over the period 2017-2019 at RDI units in Sweden, Germany, Italy, UK, Hungary and Austria, as more particularly described in the technical description (the "**Technical Description**") set out in Schedule A (the "**Project**").
- (2) The total cost of the Project, as estimated by the Bank, is EUR 214,600,000 (two hundred and fourteen million, six hundred thousand euros) and the Borrowers have stated that they intend to finance the Project as follows:

Source	Amount (Million EUR)
Own funds	109.6
Credit from the Bank	105
TOTAL	214.6

- (3) In order to fulfil the financing plan set out in Recital (2), the Borrowers have requested from the Bank a credit equivalent to EUR 105,000,000 (one hundred and five million euros) in aggregate.
- (4) The Bank, considering that the financing of the Project falls within the scope of its functions, and having regard to the statements and facts cited in these Recitals, has decided to give effect to the Borrowers' request providing to them a credit in an amount equivalent to EUR 105,000,000 (one hundred and five million euros) in aggregate under this Finance Contract (the "**Contract**"); provided that the amount of the Bank loan shall not, in any case, exceed 50% (fifty per cent) of the total cost of the Project set out in Recital (2).
- (5) The board of managers of each of the Borrowers has authorised the borrowing of the sum of EUR 105,000,000 (one hundred and five million euros) in aggregate represented by this credit on the terms and conditions set out in this Contract and in Annex I.
- (6) The financial obligations of the Borrowers under this Contract are to be guaranteed by the Guarantor under a guarantee and indemnity (the "**Guarantee**") by execution of a guarantee and indemnity agreement in form and substance satisfactory to the Bank (the "**Guarantee Agreement**").
- (7) The Statute of the Bank provides that the Bank shall ensure that its funds are used as rationally as possible in the interests of the European Union; and, accordingly, the terms and conditions of the Bank's loan operations must be consistent with relevant policies of the European Union.
- (8) The Credit falls under a joint initiative between the Bank and the European Commission, which is intended as a new Bank financing instrument, to finance, inter alia, research projects and research infrastructure under the Horizon 2020 framework programme of the European Union for Research and Technological Development (2014-2020) ("**Horizon 2020**").
- (9) The Bank considers that access to information plays an essential role in the reduction of environmental and social risks, including human rights violations, linked to the projects it finances. The Bank has therefore established its transparency policy, the purpose of which is to enhance the accountability of the Bank's group companies towards its stakeholders and the citizens of the European Union in general, by giving access to the information that will enable them to understand its governance, strategy, policies, activities and practices.

- (10) The processing of personal data shall be carried out by the Bank in accordance with applicable European Union legislation on the protection of individuals with regard to the processing of personal data by the EC institutions and bodies and on the free movement of such data.

**NOW THEREFORE** it is hereby agreed as follows:

## **INTERPRETATION AND DEFINITIONS**

### **(a) Interpretation**

- (i) References in this Contract to Articles, Recitals, Schedules and Annexes are, save if explicitly stipulated otherwise, references respectively to articles of, and recitals, schedules and annexes to this Contract.
- (ii) References in this Contract to "law" mean any law (including any common or customary law) and any treaty, constitution, statute, legislation, decree, normative act, rule, regulation, judgement, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which has the force of law or the compliance with which is in accordance with general practice in such jurisdiction.
- (iii) References in this Contract to a provision of law are references to that provision as amended or re-enacted.
- (iv) References in this Contract to any other agreement or instrument are references to that other agreement or instrument as amended, novated, supplemented, extended or restated.
- (v) In this Contract "including" and "include" shall be deemed to be followed by "without limitation" where not so followed.
- (vi) In this Contract the headings and Table of Contents are inserted for convenience of reference only and shall not affect the interpretation of this Contract.
- (vii) Words imparting the plural shall include the singular and vice versa.
- (viii) In this Contract, references to "Subsidiary" and "Group" shall at all times include each of the Borrowers.
- (ix) In this Contract, references to the "relevant Borrower" in relation to a Tranche or proposed Tranche shall mean the borrower of, or proposed borrower of that Tranche or the proposed Tranche.

### **(b) Definitions**

In this Contract:

**"Acceptance Deadline"** for a notice means:

- (a) 16h00 Luxembourg time on the day of delivery, if the notice is delivered by 14h00 Luxembourg time on a Business Day; or
- (b) 11h00 Luxembourg time on the next following day which is a Business Day, if the notice is delivered after 14h00 Luxembourg time on any such day or is delivered on a day which is not a Business Day.

**"Accepted Tranche"** means a Tranche in respect of which a Disbursement Offer has been duly accepted by the Borrower in accordance with its terms on or before the Disbursement Acceptance Deadline.

**"Authorisation"** means any authorisation, consent, permit, approval, resolution, licence, exemption, filing, notarisation or registration.

**"Borrower"** means Borrower 1 or Borrower 2, as applicable, and in relation to a Tranche or proposed Tranche, whichever of Borrower 1 or Borrower 2 is specified in the Disbursement Offer relating to that Tranche, and **"Borrowers"** means both of them. For the avoidance of doubt, each Borrower shall only be liable for Loans made to it and shall not be jointly and severally liable for Loans to the other Borrower.

**"Business Day"** means a day (other than a Saturday or Sunday) on which the Bank and commercial banks are open for general business in Luxembourg.

**"Change-of-Control Event"** has the meaning given to it in Article 4.03A(3).

**"Change-of-Law Event"** has the meaning given to it in Article 4.03A(4).

**"Code"** means the Internal Revenue Code of 1986, as the same may be amended from time to time, and the U.S. Treasury regulations promulgated thereunder.

**"Compliance Certificate"** means a certificate substantially in the form set out in Schedule E.3.

**"Compulsory Prepayment Event"** means any fact, event or circumstance which constitutes or which would (with the expiry of a grace period, the giving of notice, the making of any determination under any Finance Document or any combination of any of the foregoing) constitute a prepayment event under Article 4.03A.

**"Consolidated EBITDA"** shall mean, for any period, Consolidated Net Income for such period, plus

- (a) without duplication and to the extent deducted in determining such Consolidated Net Income, the sum of:
  - (i) Consolidated Interest Expense for such period;
  - (ii) consolidated income tax expense for such period;
  - (iii) all amounts attributable to depreciation for such period and amortization of intangible and capitalized assets for such period;
  - (iv) any losses during such period attributable to the disposition of assets other than in the ordinary course of business;
  - (v) any other extraordinary non-cash charges for such period;
  - (vi) any non-cash expenses for such period resulting from the grant of stock options or other equity-based incentives to any director, officer or employee of the Guarantor or any Subsidiary;
  - (vii) any losses attributable to early extinguishment of Financial Indebtedness or obligations under any hedging agreement;
  - (viii) any unrealised non-cash losses for such period attributable to accounting in respect of any hedging agreements;

- (ix) the cumulative effect of changes in accounting principles; and
  - (x) any fees and expenses for such period in relation to the Finance Documents,
- and minus
- (b) without duplication and to the extent included in determining such Consolidated Net Income:
- (i) any gains during such period attributable to the disposition of assets other than in the ordinary course of business;
  - (ii) any other extraordinary non-cash gains for such period;
  - (iii) any gains attributable to the early extinguishment of Financial Indebtedness or obligations under any hedging agreement;
  - (iv) any unrealized non-cash gains for such period attributable to accounting in respect of hedging agreements;
  - (v) the cumulative effect of changes in accounting principles; and
  - (vi) any cash payments made during such period with respect to noncash items added back (or that would have been added back had the Contract been in effect) in computing Consolidated EBITDA for any prior period.

For purposes of calculating Consolidated EBITDA for any period to determine the Leverage Ratio, if during such period the Guarantor or any Subsidiary shall have consummated a material acquisition or a material disposition, Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto.

**"Consolidated Interest Expense"** shall mean, for any period, the interest expense (including imputed interest expense in respect of capital lease obligations) of the Group for such period, determined on a consolidated basis in accordance with GAAP. Consolidated Interest Expense for any period during which any member of the Group shall have consummated a material acquisition or a material disposition shall be calculated after giving pro forma effect thereto.

**"Consolidated Net Income"** shall mean, for any period, the net income or loss of the Group for such period, determined on a consolidated basis in accordance with GAAP.

**"Consolidated Net Tangible Assets"** shall mean at any time the total of all assets appearing on the most recent consolidated balance sheet of the Group less the sum of the following items as shown on such consolidated balance sheet:

- (a) the book amount of all segregated intangible assets, including such items as goodwill, trademarks, trademark rights, trade names, trade name rights, copyrights, patents, patent rights and licenses and unamortized debt discount and expense less unamortized debt premium;
- (b) all depreciation, valuation and other reserves;
- (c) current liabilities;
- (d) any minority interest in the shares of stock (other than Preferred Stock) and surplus of Subsidiaries; and

(e) deferred income and deferred liabilities.

**"Consolidated Total Indebtedness"** shall mean, as of any date, the aggregate principal amount of Financial Indebtedness of the Group outstanding as of such date, determined on a consolidated basis in accordance with GAAP.

**"Contract"** has the meaning given to it in Recital (4).

**"Credit"** has the meaning given to it in Article 1.01.

**"Credit Rating"** means the higher of the two lowest Credit Ratings in case of three or more, or the lower in case of two, or the current rating in case of one of any of the following ratings as assigned by a Rating Agency in respect of the Guarantor:

- (a) the rating assigned to the Guarantor's most recent unsecured and unsubordinated medium or long term debt;
- (b) the Long Term Issuer Credit Rating (or equivalent) defined as such by Standard and Poor's Ratings Group or its successor;
- (c) the Corporate Credit Rating (or equivalent) defined as such by Standard and Poor's Ratings Group or its successor;
- (d) the Long Term Issuer Default Rating (or equivalent) defined as such by Fitch Ratings Limited or its successor; or
- (e) the Long Term Issuer Rating (or equivalent) defined as such by Moody's Investors Service, Inc. or its successor,

provided that in each of the cases (b) to (e) above the terms defined shall be deemed to refer to any equivalent term irrespective of the definition given to it and excludes any rating qualified by the terms "National Scale", "NSR", "Local", "Local Currency", "Domestic" or "Domestic Currency".

**"Criminal Offence"** means any of the following criminal offences as applicable: fraud, corruption, coercion, collusion, obstruction, money laundering and financing of terrorism.

**"Default"** means an Event of Default or any fact, event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under any Finance Document or any combination of any of the foregoing) constitute an Event of Default.

**"Deferment Indemnity"** means an indemnity calculated on the amount of disbursement deferred or suspended at the percentage rate (if higher than zero) by which:

the interest rate net of the Margin that would have been applicable to such amount had it been disbursed to the relevant Borrower on the Scheduled Disbursement Date

exceeds

- the Relevant Interbank Rate (one month rate) less 0.125% (12.5 basis points), unless this value is less than zero, in which case it will be set at zero.

Such indemnity shall accrue from the Scheduled Disbursement Date to the actual disbursement date or, as the case may be, until the date of cancellation of the Accepted Tranche in accordance with this Contract.

**"Disbursement Acceptance"** means a copy of the Disbursement Offer duly countersigned by the Borrower.

**"Disbursement Acceptance Deadline"** means the date and time of expiry of a Disbursement Offer as specified therein.

**"Disbursement Offer"** means a letter substantially in the form set out in Schedule C.1.

**"Disruption Event"** means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with this Contract; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of either the Bank or a Borrower preventing that party:
  - (i) from performing its payment obligations under this Contract; or
  - (ii) from communicating with other parties,and which disruption (in either such case as per (a) or (b) above) is not caused by, and is beyond the control of, the party whose operations are disrupted.

**"Environment"** means the following, in so far as they affect human health and social well-being:

- (a) fauna and flora;
- (b) soil, water, air, climate and the landscape; and
- (c) cultural heritage and the built environment,

and includes, without limitation, occupational and community health and safety matters and working conditions.

**"Environmental Approval"** means any Authorisation required by Environmental Law.

**"Environmental Claim"** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

**"Environmental Law"** means:

- (a) EU law, standards and principles;
- (b) national laws and regulations; and
- (c) applicable international treaties,

of which a principal objective is the preservation, protection or improvement of the Environment.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

**"ERISA Affiliate"** means any trade or business (whether or not incorporated) that, together with a Borrower or the Guarantor, is treated as a single employer under Section 414(b) or (c) of the Code,

or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

**"ERISA Event"** means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan other than events for which the 30 days' notice period has been waived; (b) a failure by any Plan to meet the minimum funding standards (as defined in Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, in each instance, whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standards with respect to any Plan; (d) the incurrence of any liability under Title IV of ERISA with respect to the termination of any Plan or the withdrawal or partial withdrawal of a Borrower or the Guarantor or any of its ERISA Affiliates from any Plan or Multiemployer Plan; (e) the receipt by a Borrower or the Guarantor or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the receipt by a Borrower or the Guarantor or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from a Borrower or the Guarantor or any ERISA Affiliate of any notice, that Withdrawal Liability is being imposed or a determination that a Multiemployer Plan is, or is expected to be, insolvent, within the meaning of Title IV of ERISA or in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA); or (g) the occurrence of a "prohibited transaction" with respect to which a Borrower or the Guarantor or any of its Subsidiaries is a "disqualified person" (within the meaning of Section 4975 of the Code), or with respect to which a Borrower or the Guarantor or any such Subsidiary could otherwise be liable.

**"EURIBOR"** has the meaning given to it in Schedule B.

**"EUR"** or **"euro"** means the lawful currency of the Member States of the European Union which from time to time adopt or have adopted it as their currency in accordance with the relevant provisions of the Treaty on European Union and the Treaty on the Functioning of the European Union or their succeeding treaties.

**"Event of Default"** means each of the events specified in Articles 10.01A and/or 10.01B.

**"Final Availability Date"** means the date which is 18 months after the date of this Contract.

**"Finance Documents"** means this Contract, the Guarantee Agreement, the Up-front Fee Letter and any other document designated as such by the Bank and the Borrowers.

**"Financial Indebtedness"** of any person means all indebtedness representing money borrowed or the deferred purchase price of property (other than trade accounts payable) or any capitalised lease obligation, which in any case is created, assumed, incurred or guaranteed in any manner by such person or for which such person is responsible or liable (whether by agreement to purchase indebtedness of, or to supply funds to or invest in, others or otherwise). For the avoidance of doubt, the term "Financial Indebtedness" shall not include obligations under hedging agreements.

**"Fixed Rate"** means an annual interest rate determined by the Bank in accordance with the applicable principles from time to time laid down by the governing bodies of the Bank for loans made at a fixed rate of interest, denominated in the currency of the Tranche and bearing equivalent terms for the repayment of capital and the payment of interest. Fixed Rate shall include the Margin.

**"Fixed Rate Tranche"** means a Tranche on which Fixed Rate is applied.

**"Floating Rate"** means a fixed-spread floating interest rate, that is to say an annual interest rate determined by the Bank for each successive Floating Rate Reference Period equal to the Relevant Interbank Rate plus the Spread.

**"Floating Rate Reference Period"** means each period from one Payment Date to the next relevant Payment Date; the first Floating Rate Reference Period shall commence on the date of disbursement of the Tranche.

**"Floating Rate Tranche"** means a Tranche on which Floating Rate is applied.

**"FRB"** means the Board of Governors of the Federal Reserve System of the United States.

**"GAAP"** means, in respect of each Borrower, generally accepted accounting principles in Luxembourg, or, with respect to any other company, generally accepted accounting principles in the jurisdiction of incorporation of the relevant company.

**"GBP"** means pounds sterling, being the lawful currency of the United Kingdom.

**"Group"** means the Guarantor and the Subsidiaries (including the Borrowers) and **"member of the Group"** means any of them.

**"Guarantee"** has the meaning given to it in Recital (6).

**"Guarantee Agreement"** has the meaning given to it in Recital (6).

**"Guarantor"** has the meaning given to it in Recital (6).

**"Horizon 2020 Legal Basis"** means the Regulation 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 and Council Decision of 3 December 2013 establishing the specific programme implementing Horizon 2020.

**"IFRS"** means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

**"Indemnifiable Prepayment Event"** means a prepayment event under Article 4.03A other than paragraph 4.03A(2) or 4.03A(5).

**"Interest Revision/Conversion"** means the determination of new financial conditions relative to the interest rate, specifically the same interest rate basis ("revision") or a different interest rate basis ("conversion") which can be offered for the remaining term of a Tranche or until a next Interest Revision/Conversion Date, if any, for an amount which, at the proposed Interest Revision/Conversion Date, is not less than EUR 10,000,000 (ten million euros) or the equivalent thereof.

**"Interest Revision/Conversion Date"** means the date, which shall be a Payment Date, specified by the Bank pursuant to Article 1.02B in the Disbursement Offer or pursuant to Article 3 and Schedule D.

**"Interest Revision/Conversion Proposal"** means a proposal made by the Bank pursuant to Schedule D.

**"Interest Revision/Conversion Request"** means a written notice from a Borrower, delivered at least 75 (seventy-five) days before an Interest Revision/Conversion Date, requesting the Bank to submit to it an Interest Revision/Conversion Proposal. The Interest Revision/Conversion Request shall also specify:

- (a) Payment Dates chosen in accordance with the provisions of Article 3.01A;
- (b) the preferred repayment schedule chosen in accordance with Article 4.01; and



(c) any further Interest Revision/Conversion Date chosen in accordance with Article 3.01A.

"**IRS**" means the US Internal Revenue Service.

"**Leverage Ratio**" shall mean, at any time, the ratio of (a) Consolidated Total Indebtedness at such time to (b) Consolidated EBITDA for the most recently ended period of four consecutive fiscal quarters.

"**LIBOR**" has the meaning given to it in Schedule B.

"**Loan**" means the aggregate amount of Tranches disbursed from time to time by the Bank under this Contract.

"**Luxembourg**" means the Grand Duchy of Luxembourg.

"**Margin**" means the component of the rate of interest quantified in Article 3.01A.

"**Market Disruption Event**" means any of the following circumstances:

- (a) there are, in the reasonable opinion of the Bank, events or circumstances adversely affecting the Bank's access to its sources of funding;
  - (b) in the opinion of the Bank, funds are not available from its ordinary sources of funding in order to adequately fund a Tranche in the relevant currency and/or for the relevant maturity and/or in relation to the reimbursement profile of such Tranche;
  - (c) in relation to a Tranche in respect of which interest is or would be payable at a Floating Rate:
    - (A) the cost to the Bank of obtaining funds from its sources of funding, as determined by the Bank, for a period equal to the Floating Rate Reference Period of such Tranche (i.e. in the money market) would be in excess of the applicable Relevant Interbank Rate;
- or
- (B) the Bank determines that adequate and fair means do not exist for ascertaining the applicable Relevant Interbank Rate for the relevant currency of such Tranche or it is not possible to determine the Relevant Interbank Rate in accordance with the definition contained in Schedule B.

For the purposes of Article 1.06B(b), "Tranche" will mean a Tranche as offered under Article 1.02B.

"**Material Adverse Change**" means any event or change of condition which has a material adverse effect on:

- (a) the ability of a Borrower or respectively the Guarantor to perform its payment obligations under any Finance Document;
- (b) the business, operations or financial condition of the Group taken as a whole; or
- (c) the validity or enforceability of the rights or remedies of the Bank under any Finance Document.

**"Material Subsidiary"** shall mean, at any time, each Subsidiary accounting for more than 5% of the consolidated revenues of the Guarantor for the most recent period of four consecutive fiscal quarters of the Guarantor, as applicable, or more than 5% of the consolidated total assets of the Guarantor at the end of such applicable period; provided that if at the end of or for any such period of four consecutive fiscal quarters all Subsidiaries that are not Material Subsidiaries shall account for more than 10% of the consolidated revenues of the Guarantor or more than 10% of the consolidated total assets of the Guarantor, the Guarantor shall designate sufficient Subsidiaries as "Material Subsidiaries" to eliminate such excess (or if the Guarantor shall have failed to designate such Subsidiaries within 10 Business Days, Subsidiaries shall automatically be deemed designated as Material Subsidiaries in descending order based on the amounts of their contributions to consolidated total assets until such excess shall have been eliminated), and the Subsidiaries so designated or deemed designated shall for all purposes of this Contract constitute Material Subsidiaries.

**"Maturity Date"** means the last or sole repayment date of a Tranche specified pursuant to Article 4.01A(b)(iv) or Article 4.01B.

**"Multiemployer Plan"** means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

**"Participating Member State"** means any member state of the European Union that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

**"Payment Date"** means: the annual, semi-annual or quarterly dates specified in the Disbursement Offer until the Interest Revision/Conversion Date, if any, or the Maturity Date, save that, in case any such date is not a Relevant Business Day, it means:

- (a) for a Fixed Rate Tranche, the following Relevant Business Day, without adjustment to the interest due under Article 3.01B except for those cases where repayment is made in a single instalment according to Article 4.01B, when the preceding Relevant Business Day shall apply instead to this single instalment and last interest payment and only in this case, with adjustment to the interest due under Article 3.01B; and
- (b) for a Floating Rate Tranche, the next day, if any, of that calendar month that is a Relevant Business Day or, failing that, the nearest preceding day that is a Relevant Business Day, in all cases with corresponding adjustment to the interest due under Article 3.01C.

**"PBGC"** means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

**"Permitted Disposal"** means a disposal for fair market value and at arm's length:

- (a) made in the ordinary course of trading of the disposing entity; or
- (b) of assets in exchange for other assets comparable or superior as to type, value and quality; or
- (c) made with the prior written consent of the Bank; or
- (d) where the disposal would not result or is not likely to result in a Material Adverse Change;

in each case, for the avoidance of doubt, other than assets forming part of the Project which may not be disposed of pursuant to Article 6.05(b) and all shares in Subsidiaries holding assets forming part of the Project which may not be disposed of.

**"Permitted Security"** means:

- (a) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (b) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:
  - (i) hedging any risk to which any member of the Group is exposed in its ordinary course of trading; or
  - (ii) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,excluding, in each case, any Security or Quasi Security under a credit support arrangement in relation to a hedging transaction;
- (c) other than any lien imposed pursuant to Section 430(k) of the Code or Section 303(k) of ERISA or a violation of Section 436 of the Code, any lien arising by operation of law and in the ordinary course of trading;
- (d) any Security or Quasi Security over or affecting any asset acquired by a member of the Group after the date of this Contract if:
  - (i) the Security or Quasi Security was not created in contemplation of the acquisition of that asset by a member of the Group; and
  - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group;
- (e) any Security or Quasi Security over or affecting any asset of any company which becomes a member of the Group after the date of this Contract, where the Security or Quasi Security is created prior to the date on which that company becomes a member of the Group, if:
  - (i) the Security or Quasi Security was not created in contemplation of the acquisition of that company; and
  - (ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company;
- (f) any Security or Quasi Security entered into pursuant to or to secure amounts arising under this Contract or the Guarantee;
- (g) any Security or Quasi Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
- (h) any Security or Quasi Security created over the receivables transferred under a Permitted Securitisation; or
- (i) any Security or Quasi Security securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security or Quasi Security given by any member of the Group other than any permitted

under paragraphs (a) to (h) above) does not exceed the greater of USD 150,000,000 (or its equivalent in another currency or currencies) and 10% of Consolidated Net Tangible Assets.

**"Permitted Securitisation"** means a securitisation entered into by a member or members of the Group, in which:

- (a) the aggregate outstanding or principal value of the receivables transferred to the securitisation vehicle by all members of that Group under that securitisation, when aggregated with:
  - (i) the aggregate outstanding value of all other receivables transferred under all other Permitted Securitisations which have been completed by that time; and
  - (ii) the book value of any Security, sale, transfer or disposal permitted under Article 7.02(e)(z), does not exceed the greater of USD 150,000,000 (one hundred and fifty million dollars) (or its equivalent in another currency or currencies) and 10% of Consolidated Net Tangible Assets; and
- (b) that member of the Group receives at completion of the securitisation, as consideration for the receivables transferred, a cash sum of no less than the market value of the receivables transferred.

**"Plan"** means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA sponsored, maintained or contributed to by a Borrower or the Guarantor or any ERISA Affiliate.

**"Preferred Stock"** means any capital stock entitled by its terms to a preference (a) as to dividends or (b) upon a distribution of assets.

**"Prepayment Amount"** means the amount of a Tranche to be prepaid by a Borrower in accordance with Article 4.02A.

**"Prepayment Date"** means the date, which shall be a Payment Date, on which a Borrower proposes (or is required) to effect prepayment or cancellation of a Prepayment Amount.

**"Prepayment Indemnity"** means in respect of any principal amount to be prepaid or cancelled, the amount communicated by the Bank to a Borrower as the present value (as of the Prepayment Date) of the excess, if any, of:

- (a) the interest net of the Margin that would accrue thereafter on such amount over the period from the Prepayment Date to the Interest Revision/Conversion Date, if any, or the Maturity Date, if it were not prepaid or cancelled; over
- (b) the interest that would so accrue over that period, if it were calculated at the Redeployment Rate, less 0.15% (fifteen basis points).

The said present value shall be calculated at a discount rate equal to the Redeployment Rate, applied as of each relevant Payment Date.

**"Prepayment Notice"** means a written notice from the Bank to the Borrower in accordance with Article 4.02C.

**"Prepayment Request"** means a written request from the Borrower specifying, amongst other things, the Prepayment Amount and the Prepayment Date in accordance with Article 4.02A.

**"Principal Bank Facility"** means any working capital or syndicated credit facility or bilateral borrowing arrangement or note purchase agreement pursuant to which the Guarantor or any other member of the Group is allowed to borrow an aggregate principal amount in excess of USD 50,000,000 (or the equivalent thereof in any other currency).

**"Project"** has the meaning given to it in Recital (1).

**"Quasi-Security"** has the meaning given to it in Article 7.02.

**"Rating Agency"** means any of (a) Standard and Poor's Financial Services LLC, (b) Fitch Ratings Limited and (c) Moody's Investors Service, Inc. or their respective successors.

**"Redeployment Rate"** means the Fixed Rate excluding the Margin in effect on the day of the indemnity calculation for fixed-rate loans denominated in the same currency and which shall have the same terms for the payment of interest and the same repayment profile to the Interest Revision/Conversion Date, if any, or the Maturity Date as the Tranche in respect of which a prepayment is proposed or requested to be made. For those cases where the period is shorter than 48 months (or 36 months in the absence of a repayment of principal during that period) the most closely corresponding money market rate equivalent will be used, that is the Relevant Interbank Rate minus 0.125% (12.5 basis points) for periods of up to 12 (twelve) months. For periods falling between 12 and 36/48 months as the case may be, the bid point on the swap rates as published by ICAP in Reuters for the related currency and observed by the Bank at the time of calculation will apply.

**"Relevant Business Day"** means:

- (a) for EUR, a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007 (TARGET2) is open for the settlement of payments in EUR; and
- (b) for any other currency, a day on which banks are open for general business in the principal domestic financial centre of the relevant currency.

**"Relevant Interbank Rate"** means:

- (a) EURIBOR for a Tranche denominated in EUR;
- (b) LIBOR for a Tranche denominated in GBP or USD; and
- (c) the market rate and its definition chosen by the Bank and separately communicated to a Borrower, for a Tranche denominated in any other currency.

**"Relevant Jurisdiction"** means in relation to a Borrower or Guarantor (i) its jurisdiction of incorporation and (ii) any jurisdiction where it conducts its business.

**"Reportable Event"** means any reportable event as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414).

**"Scheduled Disbursement Date"** means the date on which a Tranche is scheduled to be disbursed in accordance with Article 1.02B.

**"SEC"** means the U.S. Securities and Exchange Commission.

**"Security"** means any mortgage, pledge, lien, charge, assignment, hypothecation, or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Sensus Acquisition"** means the purchase, directly or indirectly, by the Guarantor of the shares in Sensus USA Inc., a company duly incorporated under the laws of Delaware, Sensus Metering Systems (Luxco 1) S.à r.l., a Luxembourg *société à responsabilité limitée*, and each of their direct and indirect subsidiaries.

**"Sensus Acquisition Agreement"** means that certain Share Purchase Agreement dated as of as of August 15, 2016 among Sensus Worldwide Limited, Sensus Industries Limited, Sensus USA Inc., the Guarantor and Xylem Luxembourg S.à r.l., a Luxembourg *société à responsabilité limitée*.

**"Sensus Closing Date"** means the date, if any, on which the Sensus Acquisition is consummated.

**"Solvent"** means as to the Guarantor that as of the date of determination both (a) (i) the sum of the Guarantor's debt (including contingent liabilities) does not exceed all of its property, at a fair valuation; (ii) the Guarantor is able to pay the probable liabilities on the **Guarantor's** then existing debts as they become absolute and matured; and (iii) the Guarantor has not incurred, does not believe (and has no reason to believe) that it will incur, debts beyond its ability to pay such debts as they become due; and (b) the Guarantor is "solvent" within the meaning given that term and similar terms under applicable US laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (discounted to present value at rates believed to be reasonable by the Guarantor acting in good faith).

**"Spread"** means the fixed spread to the Relevant Interbank Rate (being either plus or minus) determined by the Bank including the Margin and notified to a Borrower in the relevant Disbursement Offer or Interest Revision/Conversion Proposal.

**"Subsidiary"** means all entities which are consolidated with the Guarantor in accordance with generally accepted accounting principles and practices in effect from time to time in the United States of America (US GAAP).

**"Technical Description"** has the meaning given to it in Recital (1).

**"Tranche"** means each disbursement made or to be made under this Contract.

**"Up-front Fee"** has the meaning given to that term in Article 1.08.

**"Up-front Fee Letter"** means the letter between Borrower 1 and the Bank dated on or about the date of this Contract setting out the amount of the Up-front Fee payable under Article 1.08.

**"US"** means the United States of America.

**"USD"** means United States Dollars, being the lawful currency of the United States of America.

**"Withdrawal Liability"** means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

**(c) Luxembourg Terms**

Without prejudice to the generality of any provision of this Contract, in this Contract where it relates to a Luxembourg entity, a reference to:

- (a) a receiver, liquidator, administrator, administrative receiver or similar officer includes, without limitation, a *juge délégué, commissaire, juge-commissaire, mandataire ad hoc, administrateur provisoire, liquidateur or curateur*;
- (b) a lien or security interest includes, without limitation, any *hypothèque, nantissement, gage, privilège, sûreté réelle, droit de rétention*, and any type of security in rem (*sûreté réelle*) or agreement or arrangement having a similar effect and any transfer of title by way of security;
- (c) person being unable to pay its debts includes, without limitation, that person being in a state of *cessation de paiements*;
- (d) constitutional documents includes, without limitation, its up-to-date (restated) articles of association (*statuts coordonnés*).

## ARTICLE 1

### Credit and Disbursements

#### **1.01 Amount of Credit**

By this Contract the Bank establishes in favour of the Borrowers, and the Borrowers accept, the credit in an amount equivalent of up to EUR 105,000,000 (one hundred and five million euros) in aggregate for the financing of the Project (the "**Credit**").

#### **1.02 Disbursement procedure**

##### **1.02A Tranches**

The Bank shall disburse the Credit in up to 5 (five) Tranches. The amount of each Tranche, if not being the undrawn balance of the Credit, shall be in a minimum amount of or equivalent to EUR 15,000,000 (fifteen million euros).

##### **1.02B Disbursement Offer**

Upon request by a Borrower, provided that no event mentioned in Article 1.06B has occurred and is continuing, the Bank shall send to that Borrower a Disbursement Offer for the disbursement of a Tranche. The latest time for receipt by a Borrower, of a Disbursement Offer is 10 (ten) days before the Final Availability Date. The Disbursement Offer shall specify:

- (a) the amount and currency of the Tranche;
- (b) the Scheduled Disbursement Date, which shall be a Relevant Business Day, falling at least 10 (ten) days after the date of the Disbursement Offer and on or before the Final Availability Date;
- (c) the interest rate basis of the Tranche, being: (A) a Fixed Rate Tranche; or (B) a Floating Rate Tranche all pursuant to the relevant provisions of Article 3.01A;
- (d) the interest payment periodicity for the Tranche, in accordance with the provisions of Article 3;
- (e) the first Payment Date for the Tranche;

- (f) the terms for repayment of principal for the Tranche, in accordance with the provisions of Article 4.01;
- (g) the first and last repayment dates of principal for the Tranche;
- (h) the Interest Revision/Conversion Date, if requested by a Borrower, for the Tranche;
- (i) for a Fixed Rate Tranche, the Fixed Rate and for a Floating Rate Tranche the Spread, applicable until the Interest Revision/Conversion Date, if any, or until the Maturity Date; and
- (j) the Disbursement Acceptance Deadline.

#### **1.02C Disbursement Acceptance**

The relevant Borrower may accept a Disbursement Offer by delivering a Disbursement Acceptance to the Bank no later than the Disbursement Acceptance Deadline. The Disbursement Acceptance shall be accompanied:

- (a) by the IBAN code (and appropriate format in line with local banking practice) and SWIFT BIC of the relevant Borrower's bank account to which disbursement of the Tranche should be made in accordance with Article 1.02D; and
- (b) by evidence of the authority of the person or persons authorised to sign the Disbursement Acceptance and the specimen signature of such person or persons or a declaration by the relevant Borrower that no change has occurred in relation to the authority of the person or persons authorised to sign Disbursement Acceptances under this Contract.

If a Disbursement Offer is duly accepted by the relevant Borrower in accordance with its terms on or before the Disbursement Acceptance Deadline, the Bank shall make the Accepted Tranche available to the relevant Borrower in accordance with the relevant Disbursement Offer and subject to the terms and conditions of this Contract.

The relevant Borrower shall be deemed to have refused any Disbursement Offer which has not been duly accepted in accordance with its terms on or before the Disbursement Acceptance Deadline.

#### **1.02D Disbursement Account**

Disbursement shall be made to the account of a Borrower as that Borrower shall notify in writing to the Bank in accordance with Article 1.02C(a).

Only one account may be specified for each Tranche.

#### **1.03 Currency of disbursement**

Subject to availability, disbursement of each Tranche shall be made in EUR or any other currency that is widely traded on the principal foreign exchange markets.

For the calculation of the sums available to be disbursed in currencies other than EUR, and to determine their equivalent in EUR, the Bank shall apply the rate published by the European Central Bank in Frankfurt, available on or shortly before submission of the Disbursement Offer as the Bank shall decide.



#### **1.04 Conditions of disbursement**

##### **1.04A First Tranche**

The disbursement of the first Tranche under Article 1.02 is conditional upon receipt by the Bank in form and substance satisfactory to it, on or before the date falling 5 (five) Business Days before the Scheduled Disbursement Date for the first Tranche, of the following documents or evidence:

- (a) evidence that the execution of this Contract by each Borrower has been duly authorised and that the person or persons signing the Contract on behalf of each Borrower is/are duly authorised to do so together with the specimen signature of each such person or persons;
- (b) evidence that the Borrowers have obtained all necessary Authorisations required in connection with this Contract and the Project or, if none are required, a declaration by the Borrowers, signed by a person or persons duly authorised to act on behalf of the Borrowers, that no Authorisations are required in connection with this Contract or the Project;
- (c) the duly executed Guarantee Agreement;
- (d) evidence that the execution of the Guarantee Agreement by the Guarantor has been duly authorised and that the person or persons signing the Guarantee Agreement on behalf of the Guarantor is/are duly authorised to do so together with the specimen signature of each such person or persons (unless such specimen signatures are provided under paragraph (a) above);
- (e) the duly executed solvency certificate in the form set out in Schedule F, together with evidence that the execution of the solvency certificate by the Borrowers has been duly authorised and that the person or persons signing the solvency certificate on behalf of the Borrowers is/are duly authorised to do so together with the specimen signature of each such person or persons;
- (f) in respect of the Guarantor, a certificate of good standing (or equivalent) issued as of a recent date by the Secretary of State or other appropriate official of the Guarantor's jurisdiction of incorporation, organisation or formation and principal place of business;
- (g) an English law legal opinion of Allen & Overy LLP in relation to enforceability of the Finance Documents (as to English law), governmental consents, registration requirements, stamp duties and choice of law in a form satisfactory to the Bank;
- (h) a Luxembourg law legal opinion of Stibbe Avocats, Luxembourg in relation to the Borrowers covering, inter alia, status, powers and authority, non-conflict, governmental consents, registration requirements, stamp duties, choice of law and recognition of judgments opinion, in a form satisfactory to the Bank;
- (i) an Indiana law legal opinion of Barnes & Thornburg LLP in relation to the Guarantor covering, inter alia, status, powers and authority, non-conflict, governmental consents, registration requirements, stamp duties, choice of law, recognition of judgements; in a form satisfactory to the Bank;
- (j) a Delaware law legal opinion in relation to (i) choice of law (ii) recognition of judgements (iii) that it is not necessary under the laws of Delaware in order to enable the Bank to enforce its rights against the Guarantor under the Guarantee Agreement or this Contract or by reason of the execution of those documents or the performance by the Bank of its obligations under those documents, that the Bank should be licensed, qualified or otherwise entitled to carry on business in Delaware and (iv) the Bank is not and will not be deemed to be resident, domiciled or carrying on business in Delaware by reason only of the execution, performance and/or enforcement of the Guarantee Agreement or this Contract; in a form satisfactory to the Bank;

- (k) evidence of compliance with Article 6.10;
- (l) evidence that the process agents referred to in Article 11.03 and article 3.9 of the Guarantee Agreement have accepted their appointment; and
- (m) evidence that the Bank has received payment in full of all fees, costs and expenses then due from the Borrowers in relation to this Contract (including the Up-front Fee) and of all fees, costs and expenses then due from the Guarantor in relation to the Guarantee Agreement,

it being anticipated that, apart from the execution of the Guarantee Agreement on or about the same date as this Contract and apart from (k) and (m), each of these conditions are expected to be progressed as soon as practical after signing.

#### **1.04B All Tranches**

The disbursement of each Tranche under Article 1.02, including the first, is conditional upon:

- (a) receipt by the Bank in form and substance satisfactory to it, on or before the date falling 5 (five) Business Days before the Scheduled Disbursement Date for the proposed Tranche, of the following documents or evidence:
  - (i) a certificate from both of the Borrowers in the form of Schedule E.1;
  - (ii) a certificate from the Guarantor in the form of Schedule E.2;
  - (iii) evidence of the authority of the person or persons authorised to sign the certificates under paragraphs (i) and (ii) above and the specimen signature of such person or persons;
  - (iv) a copy of any other authorisation or other document, opinion or assurance which the Bank has notified the Borrowers is necessary or desirable in connection with the entry into, delivery and performance of, and the transactions contemplated by, the Contract or the Guarantee Agreement or the validity and enforceability of the same.
- (b) that on the Scheduled Disbursement Date for the proposed Tranche:
  - (i) the representations and warranties which are repeated pursuant to Article 6.12 are correct in all material respects; and
  - (ii) no event or circumstance which constitutes or would with the passage of time or giving of notice under this Contract constitute:
    - (aa) a Default, or
    - (bb) a prepayment event under Article 4.03,
 has occurred and is continuing unremedied or unwaived or would result from the disbursement of the proposed Tranche.

## **1.05 Deferment of disbursement**

### **1.05A Grounds for deferment**

Upon the written request of the relevant Borrower, the Bank shall defer the disbursement of any Accepted Tranche in whole or in part to a date specified by that Borrower being a date falling not later than 6 (six) months from its Scheduled Disbursement Date and not later than 60 days prior to the first repayment date of the Tranche indicated in the Disbursement Offer. In such case, that Borrower shall pay the Deferment Indemnity calculated on the amount of disbursement deferred.

Any request for deferment shall have effect in respect of a Tranche only if it is made at least 5 (five) Business Days before its Scheduled Disbursement Date.

If for an Accepted Tranche any of the conditions referred to in Article 1.04 is not fulfilled as at the specified date and at the Scheduled Disbursement Date (or the date expected for disbursement in case of a previous deferment), disbursement will be deferred to a date agreed between the Bank and that Borrower falling not earlier than 5 (five) Business Days following the fulfilment of all conditions of disbursement (without prejudice to the right of the Bank to suspend and/or cancel the undisbursed portion of the Credit in whole or in part pursuant to Article 1.06B). In such case, that Borrower shall pay the Deferment Indemnity calculated on the amount of disbursement deferred.

### **1.05B Cancellation of a disbursement deferred by 6 (six) months**

The Bank may, by notice in writing to the relevant Borrower, cancel a disbursement which has been deferred under Article 1.05A by more than 6 (six) months in aggregate. The cancelled amount shall remain available for disbursement under Article 1.02.

## **1.06 Cancellation and suspension**

### **1.06A Borrower's right to cancel**

The Borrowers may at any time by notice in writing to the Bank from them both cancel, in whole or in part and with immediate effect, the undisbursed portion of the Credit. However, the notice shall have no effect in respect of an Accepted Tranche which has a Scheduled Disbursement Date falling within 5 (five) Business Days of the date of the notice.

### **1.06B Bank's right to suspend and cancel**

- (a) The Bank may, by notice in writing to the Borrowers, suspend and/or cancel the undisbursed portion of the Credit in whole or in part at any time and with immediate effect, upon the occurrence of an event or circumstance mentioned in Article 4.03A and in Articles 10.01A and 10.01B or an event or circumstance which would with the passage of time or giving of notice under this Contract constitute an event under Article 4.03A or a Default.
- (b) The Bank may also suspend the portion of the Credit in respect of which it has not received a Disbursement Acceptance with immediate effect in the case that a Market Disruption Event occurs.
- (c) Any suspension shall continue until the Bank ends the suspension or cancels the suspended amount.

## **1.06C Indemnity for suspension and cancellation of a Tranche**

### **1.06C(1)SUSPENSION**

If the Bank suspends an Accepted Tranche, whether upon an Indemnifiable Prepayment Event or an event mentioned in Article 10.01, the relevant Borrower shall pay to the Bank the Deferment Indemnity calculated on the amount of disbursement suspended.

### **1.06C(2)CANCELLATION**

If pursuant to Article 1.06A, the Borrowers cancel:

- (a) a Fixed Rate Tranche which is an Accepted Tranche, the relevant Borrower shall indemnify the Bank under Article 4.02B;
- (b) a Floating Rate Tranche which is an Accepted Tranche or any part of the Credit other than an Accepted Tranche, no indemnity is payable.

If the Bank cancels:

- (i) a Fixed Rate Tranche which is an Accepted Tranche upon an Indemnifiable Prepayment Event or pursuant to Article 1.05B, the relevant Borrower shall pay to the Bank the Prepayment Indemnity; or
- (ii) an Accepted Tranche upon an Event of Default, the relevant Borrower shall indemnify the Bank under Article 10.03.

Save in these cases, no indemnity is payable by the relevant Borrower upon cancellation of a Tranche by the Bank.

The indemnity shall be calculated on the basis that the cancelled amount is deemed to have been disbursed and repaid on the Scheduled Disbursement Date or, to the extent that the disbursement of the Tranche is currently deferred or suspended, on the date of the cancellation notice.

## **1.07 Cancellation after expiry of the Credit**

On the day following the Final Availability Date, and unless otherwise specifically agreed to in writing by the Bank, the part of the Credit in respect of which no Disbursement Acceptance has been made in accordance with Article 1.02C shall be automatically cancelled, without any notice being served by the Bank to either Borrower and without liability arising on the part of either party.

## **1.08 Up-front fee**

Borrower 1 shall pay or cause to be paid to the Bank within thirty days of the date of this Contract or, in case the disbursement of the first Tranche falls within thirty days of the signature of the Contract, on the Scheduled Disbursement Date for the first Tranche, an up-front fee (the "**Up-Front Fee**") in an amount set out in the Up-Front Fee Letter.

## **1.09 Non-utilisation fee**

Borrower 1 shall pay to the Bank a non-utilisation fee calculated on the daily undrawn uncanceled balance of the Credit from the date of this Contract at a rate of 0.15% (fifteen basis points) per annum, the accrued non-utilisation fee being payable:

- (a) on each March 31, June 30, September 30, December 31; and
- (b) on the Final Availability Date; or, if the Credit is cancelled in full under Article 1.06 prior to the Final Availability Date, on the date of cancellation.

If the date on which the non-utilisation fee is due to be paid is not a Relevant Business Day, payment shall be made on the next day, if any, of that calendar month that is a Relevant Business Day or, failing that, the nearest preceding day that is a Relevant Business Day, in all cases with a corresponding adjustment to the amount of non-utilisation fee due.

#### **1.10 Sums due under Article 1**

Sums due under Articles 1.05 and 1.06 shall be payable in the currency of the Tranche concerned. They shall be payable within 15 (fifteen) days of the relevant Borrower's receipt of the Bank's demand or within any longer period specified in the Bank's demand.

### **Article 2**

#### **The Loan**

##### **2.01 Amount of Loan**

The Loan shall comprise the aggregate amount of Tranches disbursed by the Bank under the Credit, as confirmed by the Bank pursuant to Article 2.03.

##### **2.02 Currency of repayment, interest and other charges**

Interest, repayments and other charges payable in respect of each Tranche shall be made by the relevant Borrower in the currency in which the Tranche is disbursed.

Any other payment shall be made in the currency specified by the Bank having regard to the currency of the expenditure to be reimbursed by means of that payment.

##### **2.03 Confirmation by the Bank**

Within 10 (ten) days after disbursement of each Tranche, the Bank shall deliver to the relevant Borrower the amortisation table referred to in Article 4.01, if appropriate, showing the disbursement date, currency, the amount disbursed, the repayment terms and the interest rate of and for that Tranche.

### **Article 3**

#### **Interest**

##### **3.01A Rate of interest**

For the purposes of this Contract "**Margin**" means 59 basis points (0.59%).

Fixed Rates and Spreads are available for periods of not less than 4 (four) years or, in the absence of a repayment of principal during that period, not less than 3 (three) years.

### **3.01B Fixed Rate Tranches**

The relevant Borrower shall pay interest on the outstanding balance of each Fixed Rate Tranche at the Fixed Rate quarterly, semi-annually or annually in arrear on the relevant Payment Dates as specified in the Disbursement Offer, commencing on the first Payment Date following the date on which the disbursement of the Tranche was made. If the period from the date on which disbursement was made to the first Payment Date is 15 (fifteen) days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

Interest shall be calculated on the basis of Article 5.01(a) at an annual rate that is the Fixed Rate.

### **3.01C Floating Rate Tranches**

The relevant Borrower shall pay interest on the outstanding balance of each Floating Rate Tranche at the Floating Rate quarterly, semi-annually or annually in arrear on the relevant Payment Dates, as specified in the Disbursement Offer commencing on the first Payment Date following the date of disbursement of the Tranche. If the period from the date of disbursement to the first Payment Date is 15 (fifteen) days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

The Bank shall notify the Floating Rate to the relevant Borrower within 10 (ten) days following the commencement of each Floating Rate Reference Period.

If pursuant to Articles 1.05 and 1.06 disbursement of any Floating Rate Tranche takes place after the Scheduled Disbursement Date, the Relevant Interbank Rate applicable to the first Floating Rate Reference Period shall apply as though the disbursement had been made on the Scheduled Disbursement Date.

Interest shall be calculated in respect of each Floating Rate Reference Period on the basis of Article 5.01(b). For the avoidance of doubt, if the Floating Rate for any Floating Rate Reference Period is below zero, it will be set at zero.

### **3.01D Revision or Conversion of Tranches**

Where the relevant Borrower exercises an option to revise or convert the interest rate basis of a Tranche, it shall, from the effective Interest Revision/Conversion Date (in accordance with the procedure set out in Schedule D) pay interest at a rate determined in accordance with the provisions of Schedule D.

### **3.02 Interest on overdue sums**

Without prejudice to Article 10 and by way of exception to Article 3.01, if the Borrower fails to pay any amount payable by it under the Contract on its due date, interest shall accrue on any overdue amount payable under the terms of this Contract from the due date to the date of actual payment at an annual rate equal to:

- (a) for overdue sums related to Floating Rate Tranches, the applicable Floating Rate plus 2% (200 basis points);
- (b) for overdue sums related to Fixed Rate Tranches, the higher of (a) the applicable Fixed Rate plus 2% (200 basis points) or (b) the Relevant Interbank Rate plus 2% (200 basis points); and
- (c) for overdue sums other than under (i) or (ii) above, the Relevant Interbank Rate plus 2% (200 basis points),

and shall be payable in accordance with the demand of the Bank. For the purpose of determining the Relevant Interbank Rate in relation to this Article 3.02, the relevant periods within the meaning of Schedule B shall be successive periods of one month commencing on the due date.

If the overdue sum is in a currency other than the currency of the Loan, the following rate per annum shall apply, namely the relevant interbank rate that is generally retained by the Bank for transactions in that currency plus 2% (200 basis points), calculated in accordance with the market practice for such rate.

### **3.03 Market Disruption Event**

In relation to a specific Accepted Tranche, if at any time between the date of receipt by the Bank of a Disbursement Acceptance in respect of such Tranche, and the date falling either thirty (30) calendar days for Tranches to be disbursed in EUR, GBD or USD, or, in the case of Tranches to be disbursed in any other currency, two Business Days prior to the Scheduled Disbursement Date, a Market Disruption Event occurs, the Bank may notify to the relevant Borrower that this clause has come into effect. In such case, the following rules shall apply:

- (a) in the case of an Accepted Tranche to be disbursed in EUR, USD or GBP, the rate of interest applicable to such Accepted Tranche until the Maturity Date or the Interest Revision/Conversion Date, if any, shall be the percentage rate per annum which is the sum of:
  - the Margin; and
  - the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank. The relevant Borrower shall have the right to refuse in writing such disbursement within the deadline specified in the notification and shall bear charges incurred as a result, if any, in which case the Bank shall not effect the disbursement and the corresponding Credit shall remain available for disbursement under Article 1.02B. If the relevant Borrower does not refuse the disbursement in time, the parties agree that the disbursement and the conditions thereof shall be fully binding for both parties.
- (b) in the case of an Accepted Tranche to be disbursed in a currency other than EUR, USD or GBP, the Bank shall notify to the relevant Borrower the EUR equivalent to be disbursed on the Scheduled Disbursement Date and the relevant percentage rate as described above under (a) applicable to the Tranche until the Maturity Date or the Interest Revision/Conversion Date if any. The relevant Borrower shall have the right to refuse in writing such disbursement within the deadline specified in the notification and shall bear charges incurred as a result, if any, in which case the Bank shall not effect the disbursement and the corresponding portion of the Credit shall remain available for disbursement under Article 1.02B. If the relevant Borrower does not refuse the disbursement in time, the parties agree that the disbursement in EUR and the conditions thereof shall be fully binding for both parties.

In each case the Spread or Fixed Rate previously notified by the Bank in the Disbursement Offer shall be no longer applicable.

## **Article 4**

### **Repayment**

#### **4.01 Normal repayment**

##### **4.01A Repayment by instalments**

- (a) The relevant Borrower shall repay each Tranche by instalments on the Payment Dates specified in the relevant Disbursement Offer in accordance with the terms of the amortisation table delivered pursuant to Article 2.03.
- (b) Each amortisation table shall be drawn up on the basis that:
  - (i) in the case of a Fixed Rate Tranche without an Interest Revision/Conversion Date, repayment shall be made annually, semi-annually or quarterly by equal instalments of principal or constant instalments consisting of principal and interest;
  - (ii) in the case of a Fixed Rate Tranche with an Interest Revision/Conversion Date or a Floating Rate Tranche, repayment shall be made by equal annual, semi-annual or quarterly instalments of principal;
  - (iii) the first repayment date of each Tranche shall be a Payment Date falling not earlier than 60 days from the Scheduled Disbursement Date and not later than the first Payment Date immediately following the third anniversary of the Scheduled Disbursement Date of the Tranche; and
  - (iv) the last repayment date of each Tranche shall be a Payment Date falling not earlier than 4 (four) years and not later than 11 years from the Scheduled Disbursement Date.

##### **4.01B Single instalment**

Alternatively, the relevant Borrower may repay the Tranche in a single instalment on a Payment Date specified in the Disbursement Offer, being a date falling not less than 3 (three) years or more than 7 (seven) years from the Scheduled Disbursement Date.

#### **4.02 Voluntary prepayment**

##### **4.02A Prepayment option**

Subject to Articles 4.02B, 4.02C and 4.04, the relevant Borrower may prepay all or part of any Tranche, together with accrued interest and indemnities if any, upon giving a Prepayment Request to the Bank with at least 1 (one) month's prior notice specifying the (i) Prepayment Amount (ii) the Prepayment Date, (iii) if applicable, the choice of application method of the Prepayment Amount in line with Article 5.04(c)(i) and (iv) the contract number ("FI nr") mentioned on the cover page of this Contract.

Subject to Article 4.02C the Prepayment Request shall be binding and irrevocable.



#### **4.02B Prepayment indemnity**

##### **4.02B(1)FIXED RATE TRANCHE**

Subject to Article 4.02B(3) below, if the relevant Borrower prepays a Fixed Rate Tranche, relevant Borrower shall pay to the Bank on the Prepayment Date the Prepayment Indemnity.

##### **4.02B(2)FLOATING RATE TRANCHE**

Subject to Article 4.02B(3) below, the relevant Borrower may prepay a Floating Rate Tranche without indemnity on any relevant Payment Date.

##### **4.02B(3)NO INDEMNITY**

Unless a Borrower has accepted in writing a Fixed Rate in respect of an Interest Revision/Conversion Proposal pursuant to Schedule D, prepayment of a Tranche on its Interest Revision/Conversion Date as accepted under Article 1.02C, or in accordance with Schedule C.1 or D, as the case may be, is effected without indemnity.

#### **4.02C Prepayment mechanics**

The Bank shall notify the relevant Borrower not later than 15 (fifteen) days prior to the Prepayment Date, of the Prepayment Amount, of the accrued interest due thereon of the indemnity payable under Article 4.02B or, as the case may be, that no indemnity is due, of the method of application of the Prepayment Amount and the Acceptance Deadline.

Not later than the Acceptance Deadline, the relevant Borrower shall notify the Bank either:

- (a) that it confirms the Prepayment Notice on the terms specified by the Bank; or
- (b) that it withdraws the Prepayment Request.

If the relevant Borrower gives the confirmation under paragraph (a) above, it shall effect the prepayment. If the relevant Borrower withdraws the Prepayment Request or fails to confirm it in due time, it may not effect the prepayment. Save as aforesaid, the Prepayment Notice shall be binding and irrevocable.

The relevant Borrower shall accompany the prepayment by the payment of accrued interest and indemnity, if any, due on the Prepayment Amount.

#### **4.03 Compulsory prepayment**

##### **4.03A Grounds for prepayment**

##### **4.03A(1)PROJECT COST REDUCTION**

If the total cost of the Project as notified by either of the, or both, Borrowers to the Bank is reduced from the figure stated in Recital (2) to a level at which the amount of the Credit exceeds 50% (fifty per cent) of such cost, the Bank may in proportion to the reduction forthwith, by notice to the Borrowers, cancel the undisbursed portion of the Credit and/or demand prepayment of the Loan. Each Borrower shall effect payment of the amount demanded of it on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

#### 4.03A(2)PARI PASSU TO NON-EIB FINANCING

If a Borrower (or any other member of the Group) voluntarily prepays (for the avoidance of doubt, prepayment shall include repurchase or cancellation where applicable) a part or the whole of any other Non-EIB Financing and:

- such prepayment is not made within a revolving credit facility (save for cancellation of the revolving credit facility); or
- such prepayment is not made out of the proceeds of a loan having a term at least equal to the unexpired term of the Non-EIB Financing prepaid; or
- following such prepayment the aggregate of the outstanding Loan and any other direct loans from the Bank constitutes more than 50% (fifty per cent.) of the aggregate outstanding Non-EIB Financing to the Group,

the Bank may, by notice to the Borrowers, cancel the undisbursed portion of the Credit and demand prepayment of the Loan. The proportion of the Loan that the Bank may require to be prepaid shall be the same as the proportion that the prepaid amount of the Non-EIB Financing bears to the aggregate outstanding amount of all Non-EIB Financing.

Each Borrower shall effect payment of the amount demanded from it on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

For the purposes of this Article, "**Non-EIB Financing**" includes any loan, (save for the Loan and any other direct loans from the Bank), credit bond or other form of financial indebtedness or any obligation for the payment or repayment of money originally granted to a Borrower or the Guarantor or the Group for a term of more than 3 (three) years.

#### 4.03A(3)CHANGE OF CONTROL

A Borrower shall promptly inform the Bank if a Change-of-Control Event has occurred.

At any time after the occurrence of a Change-of-Control Event, the Bank may, by notice to the Borrower cancel the undisbursed portion of the Credit and demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under this Contract.

Each Borrower shall effect payment of the amount demanded of it on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

For the purposes of this Article:

- (a) a "**Change-of-Control Event**" occurs if:
  - (i) any person or group of persons acting in concert shall have acquired beneficial ownership of more than 30% of the outstanding voting shares of the Guarantor;
  - (ii) during any period of 12 consecutive months, commencing after the date of the Contract, individuals who on the first day of such period were directors of the Guarantor (together with any replacement or additional directors who were

nominated or elected by a majority of directors then in office) cease to constitute a majority of the board of directors of the Guarantor; or

(iii) the Guarantor ceases to be the beneficial owner directly, or indirectly through wholly-owned subsidiaries, of the issued share capital of either of the Borrowers; and

(b) **"acting in concert"** means acting together pursuant to an agreement or understanding (whether formal or informal).

#### **4.03A(4)CHANGE OF LAW**

A Borrower shall promptly inform the Bank if a Change-of-Law Event has occurred. In such case, or if the Bank has reasonable cause to believe that a Change-of-Law Event has occurred, the Bank may request that the Borrowers consult with it. Such consultation shall take place within 30 (thirty) days from the date of the Bank's request. If, after the lapse of 30 (thirty) days from the date of such request for consultation the Bank is of the reasonable opinion that the effects of the Change-of-Law Event cannot be mitigated to its satisfaction, the Bank may by notice to the Borrowers, cancel the undisbursed portion of the Credit and/or demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under this Contract.

Each Borrower shall effect payment of the amount demanded from it on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

For the purposes of this Article **"Change-of-Law Event"** means the enactment, promulgation, execution or ratification of or any change in or amendment to any law, rule or regulation (or in the application or official interpretation of any law, rule or regulation) that occurs after the date of this Contract and which, in the reasonable opinion of the Bank, would materially impair either Borrower's ability to perform its payment obligations under this Contract or the Guarantor's ability to perform its payment obligations under the Guarantee Agreement.

#### **4.03A(5)ILLEGALITY**

If it becomes unlawful in any applicable jurisdiction for the Bank to perform any of its obligations as contemplated in this Contract or to fund or maintain the Loan, the Bank shall promptly notify the Borrowers and the Bank may immediately (i) suspend or cancel the undisbursed portion of the Credit and/or (ii) demand prepayment of the Loan on the date indicated by the Bank in its notice to the Borrowers.

#### **4.03B Prepayment mechanics**

Any sum demanded by the Bank pursuant to Article 4.03A, together with any interest or other amounts accrued or outstanding under this Contract including, without limitation, any indemnity due under Article 4.03C, shall be paid on the date indicated by the Bank in its notice of demand.

#### **4.03C Prepayment indemnity**

In the case of an Indemnifiable Prepayment Event, the indemnity, if any, shall be determined in accordance with Article 4.02B.

If, moreover, pursuant to any provision of Article 4.03A the relevant Borrower prepays a Tranche on a date other than a relevant Payment Date, that Borrower shall indemnify the Bank in such amount

as the Bank shall certify is required to compensate it for receipt of funds otherwise than on a relevant Payment Date.

#### **4.4 General**

A prepaid amount may not be reborrowed. This Article 4 shall not prejudice Article 10.

### **Article 5**

#### **Payments**

##### **5.01 Day count convention**

Any amount due by way of interest, indemnity or fee from either Borrower under this Contract, and calculated in respect of a fraction of a year, shall be determined on the following respective conventions:

- (a) in respect of interest and indemnities due under a Fixed Rate Tranche, a year of 360 (three hundred and sixty) days and a month of 30 (thirty) days;
- (b) in respect of interest and indemnities due under a Floating Rate Tranche, a year of 360 (three hundred and sixty) days but 365 (three hundred and sixty five) days (invariable) for GBP/PLN/ZAR and the number of days elapsed;
- (c) in respect of fees, a year of 360 (three hundred and sixty) days (but 365 (three hundred and sixty five) days (invariable) for fees due in GBP/PLN/ZAR) and the number of days elapsed.

##### **5.02 Time and place of payment**

Unless otherwise specified, all sums other than sums of interest, indemnity and principal are payable within 15 (fifteen) days of the relevant Borrower's receipt of the Bank's demand.

Each sum payable by either Borrower under this Contract shall be paid to the respective account notified by the Bank to the relevant Borrower. The Bank shall indicate the account not less than 15 (fifteen) days before the due date for the first payment by the relevant Borrower and shall notify any change of account not less than 15 (fifteen) days before the date of the first payment to which the change applies. This period of notice does not apply in the case of payment under Article 10.

The Borrower shall indicate in each payment made hereunder the contract number ("*FI nr*") found on the cover page of this Contract.

A sum due from either Borrower shall be deemed paid when the Bank receives it.

Any disbursements by and payments to the Bank under this Contract shall be made using account(s) acceptable to the Bank. For the avoidance of doubt, any account in the name of the Borrower held with a duly authorized financial institution in the jurisdiction where the Borrower is incorporated or where the Project is undertaken is deemed acceptable to the Bank.

##### **5.03 Disruption to Payment Systems**

If either the Bank determines (in its discretion) that a Disruption Event has occurred or the Bank is notified by either Borrower that a Disruption Event has occurred:

- (a) the Bank may, and shall if requested to do so by a Borrower consult with that Borrower with a view to agreeing with that Borrower such changes to the operation or administration of the Contract as the Bank may deem necessary in the circumstances;
- (b) the Bank shall not be obliged to consult with either Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes; and
- (c) the Bank shall not be liable for any damages, costs or losses whatsoever arising as a result of a Disruption Event or for taking or not taking any action pursuant to or in connection with this Article 5.03.

#### **5.04 Application of sums received**

- (a) General

Sums received from the relevant Borrower shall only discharge its payment obligations if received in accordance with the terms of this Contract.

- (b) Partial payments

If the Bank receives a payment that is insufficient to discharge all the amounts then due and payable by a Borrower under this Contract, the Bank shall apply that payment:

- (i) first, in or towards payment pro rata of any unpaid fees, costs, indemnities and expenses due under this Contract;
- (ii) secondly, in or towards payment of any accrued interest due but unpaid under this Contract;
- (iii) thirdly, in or towards payment of any principal due but unpaid under this Contract; and
- (iv) fourthly, in or towards payment of any other sum due but unpaid under this Contract.

- (c) Allocation of sums related to Tranches

- (i) In case of:

- a partial voluntary prepayment of a Tranche that is subject to a repayment in several instalments, the Prepayment Amount shall be applied *pro rata* to each outstanding instalment or, at the request of the Borrower, in inverse order of maturity; and
- a partial compulsory prepayment of a Tranche that is subject to a repayment in several instalments, the Prepayment Amount shall be applied in reduction of the outstanding instalments in inverse order of maturity.

- (ii) Sums received by the Bank following a demand under Article 10.01 and applied to a Tranche, shall reduce the outstanding instalments in inverse order of maturity. The Bank may apply sums received between Tranches at its discretion.
- (iii) In case of receipt of sums which cannot be identified as applicable to a specific Tranche, and on which there is no agreement between the Bank and

the Borrowers on their application, the Bank may apply these between Tranches at its discretion.

## **Article 6**

### **Borrower undertakings and representations**

The undertakings in this Article 6 remain in force from the date of this Contract for so long as any amount is outstanding under this Contract or the Credit is in force.

#### *A. Project undertakings*

##### **6.01 Use of Loan and availability of other funds**

Each Borrower shall use all amounts borrowed by it under the Loan exclusively for financing the Project (either directly or through its wholly owned subsidiaries).

Each Borrower shall ensure that it has available (either directly or through its wholly owned subsidiaries) the other funds listed in Recital (2) and that such funds are expended, to the extent required, on the financing of the Project.

##### **6.02 Completion of Project**

The Borrowers shall carry out the Project (either directly or through its direct or indirect wholly owned subsidiaries) materially in accordance with the Technical Description, as may be modified from time to time with the approval of the Bank (acting reasonably), and complete the Project by the final date specified therein.

##### **6.03 Increased cost of Project**

If the total cost of the Project exceeds the estimated figure set out in Recital (2), each Borrower shall or shall procure that one of its direct or indirect wholly owned subsidiaries shall have access to the finance to fund the excess cost without recourse to the Bank, so as to enable the Project to be completed in accordance with the Technical Description. The plans for funding the excess cost shall be communicated to the Bank without delay.

##### **6.04 Procurement procedure**

Each Borrower undertakes and shall procure that its wholly owned subsidiaries shall purchase equipment, secure services and order works for the Project (a) in so far as they apply to it or to the Project, in accordance with EU law in general and in particular with the relevant EU Directives and (b) in so far as EU Directives do not apply, by procurement procedures which, to the satisfaction of the Bank, respect the criteria of economy and efficiency and, in case of public contracts, the principles of transparency, equal treatment and non-discrimination on the basis of nationality.

##### **6.05 Continuing Project undertakings**

Each Borrower shall (and shall ensure that its relevant Subsidiaries shall) and, in the case of paragraph (f), the Guarantor shall (and shall ensure that its relevant Subsidiaries shall):

- (a) **Maintenance:** maintain, repair and, if necessary, renew all material property forming part of the Project as required to keep it in good working order;

- (b) **Project assets:** unless the Bank shall have given its prior consent in writing retain title to and possession of all material assets comprising the Project or, as appropriate, replace and renew such assets and maintain the Project in substantially continuous operation in accordance with its original purpose; provided that the Bank may withhold its consent only where the proposed action would prejudice the Bank's interests as lender to either Borrower or would render the Project ineligible for financing by the Bank under its Statute or under Article 309 of the Treaty on the Functioning of the European Union;
- (c) **Insurance:** insure all works and property forming part of the Project with insurance companies that maintain a minimum A.M. Best rating of at least A-VIII, which insurance shall include limits and coverages that are usual and customary for business in the same industry and the like financial size and risk profile;
- (d) **Rights and Permits:** maintain in force all rights of way or use and all material permits, licenses, approvals or authorisations necessary for the execution and operation of the Project;
- (e) **Environment:**
  - (i) implement and operate the Project in material compliance with Environmental Law;
  - (ii) obtain and maintain requisite Environmental Approvals for the Project; and
  - (iii) comply with any such Environmental Approvals; and
- (f) **Integrity:** take, within a reasonable timeframe, appropriate measures in respect of any member of its management bodies who has been convicted by a final and irrevocable court ruling of a Criminal Offence perpetrated in the course of the exercise of his/her professional duties, in order to ensure that such member is excluded from any Borrower's or the Guarantor's (as applicable) activity in relation to the Loan or the Project.

*B. General undertakings*

**6.06 Disposal of assets**

- (a) Except as provided below, a Borrower shall not, and the Guarantor shall procure that no other member of the Group will, either in a single transaction or in a series of transactions whether related or not and whether voluntarily or involuntarily dispose of any part of its assets.
- (b) Paragraph (a) above does not apply to any disposal of assets which is a Permitted Disposal.

For the purposes of this Article, "**dispose**" and "**disposal**" includes any act effecting sale, transfer, lease or other disposal.

**6.07 Compliance with laws**

- (a) Each Borrower shall, and shall procure that its Subsidiaries will, comply in all respects with all laws and regulations to which it or they or the Project is subject.
- (b) The Guarantor shall, and shall procure that each Material Subsidiary shall, comply in all material respects with all laws and regulations to which it or they is subject.

#### **6.08 Change in business**

Each Borrower and the Guarantor shall procure that no substantial change is made to the core business of the Borrowers, and the Guarantor shall procure that no substantial change is made to the core business of the Group as a whole, in each case from that carried on at the date of this Contract.

#### **6.09 Merger**

Each Borrower shall not, and the Guarantor shall procure that no member of the Group will, merge into or consolidate with any other person, or permit any other person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions and including by means of any merger or sale of capital stock or otherwise) all or substantially all of its assets (whether now owned or hereafter acquired), or liquidate or dissolve, except that, if at the time thereof and immediately after given effect thereto no Default shall have occurred and be continuing or would result from such transaction, (a) either of the Borrowers or the Guarantor may merge or consolidate if (i) in the case of any such merger involving a Borrower, that Borrower is the surviving entity and (ii) in the case of any other such merger, the Guarantor is the surviving entity and (b) the subsidiary, other than either of the Borrowers or the Guarantor may sell, transfer, lease or otherwise dispose of all or substantially all of its assets to, or liquidate or dissolve into, the other Borrower or the Guarantor.

#### **6.10 Financial covenants**

Each Borrower and the Guarantor shall ensure that the Leverage Ratio shall at all times be less than 3.50:1.00; *provided* that, for the period, if any, beginning with the Sensus Closing Date and ending on (and including) the last day of the fourth full fiscal quarter ended after the Sensus Closing Date, each of the Borrower and the Guarantor will not permit the Leverage Ratio at any time to exceed 4.00:1.00.

Notwithstanding anything to the contrary set forth herein, until (and including) the earlier of (A) the Sensus Closing Date and (B) the date on which the Sensus Acquisition Agreement terminates or expires, any Financial Indebtedness incurred by the Guarantor to finance the Sensus Acquisition shall be disregarded for the purpose of determining compliance with this Article to the extent that, and so long as, the cash proceeds of such Indebtedness are either held in escrow on customary terms or are held by the Guarantor or any of its Subsidiaries as unrestricted cash or cash equivalents.

#### **6.11 Books and records**

Each Borrower shall ensure that it has kept and will continue to keep proper books and records of account, in which full and correct entries shall be made of all financial transactions and the assets and business of that Borrower, including expenditures in connection with the Project, in accordance with GAAP as in effect from time to time.

#### **6.12 General Representations and Warranties**

##### **6.12A Representations and Warranties of each Borrower and the Guarantor**

Each Borrower and the Guarantor represents and warrants to the Bank that to the best of its knowledge, no funds invested in the Project by it or by another member of the Group are of illicit origin, including products of money laundering or linked to the financing of terrorism. Each Borrower and the Guarantor shall promptly inform the Bank if at any time it becomes aware of the illicit origin of any such funds.



## 6.12B General representations and warranties of the Borrowers

Each of the Borrowers, severally, and not jointly, represents and warrants, only with respect to itself and not with respect to the other Borrower, to the Bank that:

- (a) such Borrower is duly incorporated and validly existing with limited liability under the laws of Luxembourg and has power to carry on its business as it is now being conducted and to own its property and other assets;
- (b) such Borrower has the power to execute, deliver and perform its obligations under the Finance Documents to which it is a party and all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of the same by it;
- (c) subject to due authorisation of the Bank to enter into and perform its obligations under the Finance Documents and the reservations as to matters of law set out in the legal opinions provided to the Bank under Article 1.04A, the Finance Documents to which it is a party constitutes its legally valid, binding and enforceable obligations;
- (d) the execution and delivery of, the performance of its obligations under and compliance with the provisions of the Finance Documents to which it is a party do not and will not:
  - (i) contravene or conflict in any respect with any applicable law, statute, rule or regulation, or any judgement, decree or permit to which it is subject;
  - (ii) contravene or conflict with any agreement or other instrument binding upon it which contravention or conflict is reasonably likely to result in a Material Adverse Change;
  - (iii) contravene or conflict in any material respect with any provision of its constitutional documents;
- (e) there has been no Material Adverse Change since 12 July 2016;
- (f) no Default has occurred and is continuing unremedied or unwaived or would result from the disbursement of the Loan;
- (g) no litigation, arbitration, administrative proceedings or investigation against it or any of its subsidiaries is current or to its knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined would reasonably be expected to be likely to result in a Material Adverse Change, nor is there subsisting against it or any of its subsidiaries any unsatisfied judgement or award;
- (h) it has obtained all necessary Authorisations required by it in connection with this Contract and in order to lawfully comply with its obligations hereunder, and the Project and all such Authorisations are in full force and effect and admissible in evidence;
- (i) the entry into the Finance Documents to which it is a party is for its *intérêt social*;
- (j) the entry by such Borrower into the Finance Documents to which it is a party will not violate or infringe any thin capitalisation rules applicable to that Borrower;
- (k) at the date of this Contract, no Security exists over its assets other than Permitted Security;
- (l) its payment obligations under this Contract rank not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its

debt instruments except for obligations mandatorily preferred by law applying to companies generally;

- (m) it is in compliance with Article 6.05(e) and to the best of its knowledge and belief (having made due and careful enquiry) no material Environmental Claim has been commenced or is threatened against it;
- (n) it is in compliance with all undertakings under Article 6 and 7;
- (o) it is not required to make any deduction for or on account of tax from any payment it may make under the Finance Documents to the Bank;
- (p) neither it, nor any of its subsidiaries is or is required to be registered as an "investment company" under the US Investment Company Act of 1940;
- (q) it is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the FRB) as in effect from time to time, and no proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock;
- (r) no ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Change. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of FASB ASC Topic 715) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan by an amount that could reasonably be expected to result in a Material Adverse Change and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of FASB ASC Topic 715) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans by an amount that could reasonably be expected to result in a Material Adverse Change; and
- (s) subject to the reservations as to matters of law set out in the legal opinions provided to the Bank under Article 1.04A, the choice of English law as the governing law of the Finance Documents and the submission to the jurisdiction of the English courts will be recognised and enforced in England.

#### **6.12C General representations and warranties of the Guarantor**

The Guarantor represents and warrants to the Bank that:

- (a) the Guarantor is a corporation, duly incorporated, organised or formed and in good standing under the laws of its jurisdiction of incorporation and it is duly qualified and in good standing in each other jurisdiction in which the character of its properties or the nature of its business requires such qualification except where the failure to be so qualified or in good standing would not result in a Material Adverse Change;
- (b) the Guarantor has the power to execute, deliver and perform its obligations under the Finance Documents to which it is a party and all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of the same by it;
- (c) subject to due authorisation of the Bank to enter into and perform its obligations under the Finance Documents and the reservations as to matters of law set out in the legal opinions

provided to the Bank under Article 1.04A, the Finance Documents to which it is a party constitutes its legally valid, binding and enforceable obligations;

- (d) the execution and delivery of, the performance of its obligations under and compliance with the provisions of the Finance Documents to which it is a party do not and will not:
  - (i) contravene or conflict in any respect with any applicable law, statute, rule or regulation, or any judgement, decree or permit to which it is subject;
  - (ii) contravene or conflict with any agreement or other instrument binding upon it which contravention or conflict is reasonably likely to result in a Material Adverse Change;
  - (iii) contravene or conflict in any material respect with any provision of its constitutional documents;
- (e) the latest available consolidated audited accounts of the Group have been prepared in accordance with GAAP and have been approved by its auditors as representing a true and fair view in all material respects of the results of the Group's operations for that year and, as and from the end of the Guarantor's 2015 financial year, without any material change in accounting policies (other than where required by GAAP) from those applied in the immediately previous year;
- (f) there has been no Material Adverse Change since 12 July 2016;
- (g) no Default has occurred and is continuing unremedied or unwaived or would result from the disbursement of the Loan;
- (h) no litigation, arbitration, administrative proceedings or investigation against it or any of its Subsidiaries is current or to its knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined would reasonably be expected to be likely to result in a Material Adverse Change, nor is there subsisting against it or any of its Subsidiaries any unsatisfied judgement or award;
- (i) it has obtained all necessary Authorisations required by it in connection with this Contract and in order to lawfully comply with its obligations hereunder, and the Project and all such Authorisations are in full force and effect and admissible in evidence;
- (j) the entry into the Finance Documents to which it is a party is for its corporate benefit;
- (k) at the date of this Contract, no Security exists over its assets or over those of the Group other than Permitted Security;
- (l) its payment obligations under this Contract rank not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally;
- (m) it is in compliance with all undertakings under Article 6 and 7;
- (n) no loss of rating clause or financial covenants exist under any Principal Bank Facility which are more restrictive than the ones contained in the Contract;
- (o) it is not required to make any deduction for or on account of tax from any payment it may make under the Finance Documents to the Bank;

- (p) neither it, nor any of its Subsidiaries is or is required to be registered as an "investment company" under the US Investment Company Act of 1940;
- (q) no ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Change. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of FASB ASC Topic 715) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan by an amount that could reasonably be expected to result in a Material Adverse Change and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of FASB ASC Topic 715) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans by an amount that could reasonably be expected to result in a Material Adverse Change;
- (r) at the date the Guarantor enters into the Guarantee Agreement and after and giving effect to the incurrence of any of the Guarantor's obligations under the Guarantee Agreement, the Guarantor is Solvent; and
- (s) subject to the reservations as to matters of law set out in the legal opinions provided to the Bank under Article 1.04A, the choice of English law as the governing law of the Finance Documents and the submission to the jurisdiction of the English courts will be recognised and enforced in England.

#### **6.12D Acknowledgement**

Each of the Borrowers acknowledges that it has made the representations and warranties contained in Article 6.12 with the intention of inducing the Bank to enter into this Contract and that the Bank has entered into this Contract on the basis of, and in full reliance on, each of such representations and warranties. Each of the Borrowers represents and warrants that it has no knowledge of any additional facts or matters the omission of which makes any of such representations and warranties misleading.

#### **6.12E Repetition**

The representations and warranties set out above shall survive the execution of this Contract and are, with the exception of the representations and warranties in Article 6.12B(e), (i), (j), (k) and (l), and 6.12C(f), (j), (k) and (l) deemed repeated on the date of each Disbursement Request, each Scheduled Disbursement Date and on each Payment Date, by reference to the facts and circumstances then existing.

### **Article 7**

#### **Security**

The undertakings in this Article 7 remain in force from the date of this Contract for so long as any amount is outstanding under this Contract or the Credit is in force.

#### **7.01 Guarantee**

The obligations of the Bank under this Contract are conditional upon the prior execution and delivery to the Bank of the Guarantee Agreement in form and substance satisfactory to it, whereby

the Guarantor unconditionally guarantees the due performance of the Borrowers' financial obligations under this Contract. The Borrowers hereby acknowledge and consent to the terms of the Guarantee Agreement.

**7.02 Negative pledge and sale / leasebacks**

- (a) In this Contract "**Quasi-Security**" means an arrangement or transaction described in Article 7.02(c) below.
- (b) The Borrowers and the Guarantor shall not, and the Guarantor shall ensure that no other member of the Group will, create or permit to subsist any Security over any of its assets.
- (c) The Borrowers and the Guarantor shall not, and the Guarantor shall ensure that no other member of the Group will, enter into any arrangement or transaction on assets or receivables or money (such as the sale, transfer or other disposal of assets on terms whereby they are or may be leased to or re-acquired by the Borrowers, the Guarantor or any other member of the Group, the sale, transfer or otherwise dispose of any receivables on recourse terms or any arrangement under which money or the benefit of a bank account or other account may be applied or set-off or made subject to a combination of accounts or any preferential arrangement having a similar effect) in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (d) Paragraphs (b) and (c) above shall not apply to any Security (or, as the case may be, Quasi-Security), which is a Permitted Security.
- (e) The Borrowers and the Guarantor shall not, and the Guarantor shall ensure that no other member of the Group will:
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by either of the Borrowers or the Guarantor or any other member of the Group; or
  - (ii) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset, except:

- (x) any such sale, transfer or disposal approved by the Bank;
- (y) any such sale, transfer or disposal made to another member of the Group;
- (z) any such sale, transfer or disposal (other than those set out in paragraph (x) or (y) above) of such assets the book value of which (when aggregated with (i) the aggregate book value of Security created or subsisting under paragraph (i) of the definition of Permitted Security; and (ii) the book value of any other such sale, transfer or disposal of such assets not allowed under the subparagraphs (x) or (y) above), does not exceed the greater of USD 150,000,000 (one hundred and fifty million dollars) (or its equivalent in another currency or currencies) and 10% of Consolidated Net Tangible Assets.

**7.03 Pari passu ranking**

Each Borrower and the Guarantor shall ensure that its payment obligations under this Contract rank, and will rank, not less than pari passu in right of payment with all other present and future unsecured

and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally.

#### **7.04 Clauses by inclusion**

If either Borrower, the Guarantor or any other member of the Group concludes with any other financial creditor a Principal Bank Facility that includes a loss-of-rating clause or a covenant or other provision regarding its financial ratios, if applicable, that is stricter than any equivalent provision of this Contract, that Borrower or the Guarantor shall inform the Bank and both of the Borrowers and the Guarantor shall, at the request of the Bank, execute an agreement to amend this Contract so as to provide for an equivalent provision in favour of the Bank.

### **Article 8**

#### **Information and Visits**

#### **8.01 Information concerning the Project**

Each Borrower shall:

- (a) deliver to the Bank:
  - (i) the information in content and in form, and at the times, specified in Schedule A.2 or otherwise as agreed from time to time by the parties to this Contract; and
  - (ii) any such information or further document concerning the financing, procurement, implementation, operation and environmental matters of or for the Project as the Bank may reasonably require within a reasonable time,provided always that if such information or document is not delivered to the Bank on time, and that Borrower does not rectify the omission within a reasonable time set by the Bank in writing, the Bank may remedy the deficiency, to the extent feasible, by employing its own staff or a consultant or any other third party, at that Borrower's expense and that Borrower shall provide such persons with all assistance necessary for the purpose;
- (b) submit for the approval of the Bank without delay any material change to the Project, also taking into account the disclosures made to the Bank in connection with the Project prior to the signing of this Contract, in respect of, inter alia, the price, design, plans, timetable or to the expenditure programme or financing plan for the Project;
- (c) promptly inform the Bank of:
  - (i) any action or protest initiated or any objection raised by any third party or any genuine complaint received by a Borrower or any material Environmental Claim that is to its knowledge commenced, pending or threatened against it with regard to environmental or other matters affecting the Project;
  - (ii) any fact or event known to a Borrower, after due enquiry, which may substantially prejudice or affect the conditions of execution or operation of the Project;

- (iii) any genuine allegation, complaint or information with regard to Criminal Offences related to the Project;
- (iv) any non-compliance by it with any applicable Environmental Law relevant to the Project; and
- (v) any suspension, revocation or modification of any Environmental Approval known to a Borrower, after due enquiry,

and set out the action to be taken with respect to such matters.

- (d) A Borrower need not provide information to the Bank under Articles 8.01 or 8.02 if that information has already been provided to the Bank by the other Borrower.

## **8.02 Information concerning the Borrowers**

Each Borrower shall:

- (a) deliver to the Bank:
  - (i) as soon as they become available but in any event within 90 days after the end of each of the Guarantor's financial years:
    - (A) the Guarantor's consolidated annual report, balance sheet, profit and loss account and auditor's report for that financial year; and
    - (B) a Compliance Certificate as set out in Schedule E.3 signed by two managers confirming compliance with Article 6.10 and with evidence of such compliance and related calculations;
  - (ii) as soon as they become available but in any event within 45 days after the end of each of the relevant accounting periods:
    - (A) the Guarantor's interim consolidated quarterly report, balance sheet and profit and loss account for each of the first three quarters of each of its financial years; and
    - (B) a Compliance Certificate as set out in Schedule E.3 signed by two managers confirming compliance with Article 6.10 and with evidence of such compliance and related calculations;
  - (iii) as soon as possible but in any event within 210 days after the end of each of the Borrower's financial years a Compliance Certificate as set out in Schedule E.3 signed by two managers confirming compliance with Article 6.10 and with evidence of such compliance and related calculations and, upon request by the Bank, each Borrower's annual report, balance sheet and profit and loss account for that financial year;
  - (iv) within 45 days of 30 June and 31 December in each financial year, confirmation from the Borrower or Guarantor of the Group's current outstanding debt financing, including a breakdown of figures in respect of each borrower;
  - (v) promptly upon the issuance thereof, copies of all reports, if any, to or other documents filed by any member of the Group with the SEC under the US

Securities Act of 1933 or the US Securities Exchange Act of 1934 (other than on Form S- 8 or 8-A or similar forms) including for the avoidance of doubt the Group 20F SEC Filings;

- (vi) from time to time, such further information on its general financial situation as the Bank may reasonably require,

Information required to be delivered under this paragraph (a)(i)(A), (a)(ii)(A), (iv) or (a)(v) shall be deemed to have been distributed to the Bank if such information shall be available to the Bank on the website of the Securities and Exchange Commission at <http://www.sec.gov> and a confirming electronic correspondence shall have been delivered or caused to be delivered to the Bank providing notice of such availability; and

- (b) inform the Bank immediately of:

- (i) any material alteration to its articles of association;
- (ii) any fact which obliges it to prepay any Financial Indebtedness;
- (iii) any event or decision that constitutes or may result in the events described in Article 4.03A;
- (iv) any change in any Credit Rating;
- (v) any decision on its part to grant any Security over any of its assets in favour of a third party other than Permitted Security;
- (vi) any relinquishment on its part of any material component of the Project;
- (vii) any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the Borrowers or Guarantor under any Finance Document;
- (viii) any Default having occurred;
- (ix) to the extent permitted by law, any material litigation, arbitration, administrative proceedings or investigation carried out by a court, administration or similar public authority, which, to the best of its knowledge and belief, is current, imminent or pending against such Borrower or the Guarantor or such Borrower's or the Guarantor's or controlling entities or members of such Borrower's or the Guarantor's management bodies in connection with Criminal Offences related to the Loan or the Project;
- (x) any measure taken by such Borrower or the Guarantor pursuant to Article 6.05(f) of this Contract; and
- (xi) any litigation, arbitration or administrative proceedings or investigation which is current, or to its knowledge threatened or pending against any member of the Group which might if adversely determined result in a Material Adverse Change.



### **8.03 Visits by the Bank**

Each Borrower shall, and shall procure that each of the Subsidiaries carrying out any part of the Project will, allow persons designated by the Bank, as well as persons designated by other institutions or bodies of the European Union when so required by the relevant mandatory provisions of European Union law or pursuant to the Horizon 2020 Legal Basis, provided that the Bank shall have given such Borrower reasonable prior notice of any such visit,

- (a) to visit the sites, installations and works comprising the Project;
- (b) to interview representatives of the Borrower and the Guarantor, and not obstruct contact with any other person involved in or affected by the Project; and
- (c) to conduct such on the spot audits and checks as they may wish and review the Borrowers' and/or Guarantor's books and records in relation to the execution of the Project and to be able to take copies of related documents to the extent permitted by law.

The Borrowers shall provide the Bank and the other designated persons, or ensure that the Bank or the other designated persons are provided, with all necessary assistance for the purposes described in this Article.

### **Disclosure and publication**

Each Borrower acknowledges and agrees that:

- (a) the Bank may be obliged to communicate information relating the Borrowers and the Project to any competent institution or body of the European Union in accordance with the relevant mandatory provisions of EU law. European Union law or pursuant to the Horizon 2020 Legal Basis; and
- (b) the Bank may publish in its website or produce press releases containing information related to the financing provided pursuant to this Contract, including the name, address and country of establishment of the Borrowers, and the type of financial support received under this Contract.

## **Article 9**

### **Charges and expenses**

#### **9.01 Taxes, duties and fees**

Each Borrower shall pay all taxes, duties, fees and other impositions of whatsoever nature, including stamp duty and registration fees, arising out of the execution or implementation of this Contract or any related document and in the creation, perfection, registration or enforcement of any security for the Loan to the extent applicable.

Each Borrower shall pay all principal, interest, indemnities and other amounts due from it under this Contract gross without deduction of any national or local impositions whatsoever; provided that, if that Borrower is obliged to make any such deduction, it will gross up the payment to the Bank so that after deduction, the net amount received by the Bank is equivalent to the sum due.

## **9.02 Other charges**

Each Borrower shall bear all charges and expenses, including professional, banking or exchange charges incurred in connection with the preparation, execution, implementation enforcement and termination of this Contract or the Guarantee Agreement or any related document, any amendment, supplement or waiver in respect of this Contract or any related document (including all fees and expenses to be invoiced by Allen & Overy LLP, English and United States counsel to the Bank), and in the amendment, creation, management and realisation of any security for the Loan.

## **9.03 Increased costs, indemnity and set-off**

- (a) Each Borrower shall pay to the Bank any sums or expenses incurred or suffered by the Bank as a consequence of the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or compliance with any law or regulation made after the date of signature this Contract, in accordance with which (i) the Bank is obliged to incur additional costs in order to fund or perform its obligations under this Contract, or (ii) any amount owed to the Bank under this Contract or the financial income resulting from the granting of the Credit or the Loan by the Bank to the relevant Borrower is reduced or eliminated.
- (b) Without prejudice to any other rights of the Bank under this Contract or under any applicable law, the relevant Borrower shall indemnify and hold the Bank harmless from and against any loss incurred as a result of any payment or partial discharge that takes place in a manner other than as expressly set out in this Contract.
- (c) The Bank may set off any matured obligation due from a Borrower as appropriate, under this Contract (to the extent beneficially owned by the Bank) against any obligation (whether or not matured) owed by the Bank to that Borrower regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Bank may set off in an amount estimated by it in good faith to be the amount of that obligation.

## **9.4 Currency indemnity**

If any sum due from a Borrower under this Contract (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (a) making or filing a claim or proof against that Borrower; or
- (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Borrower shall, as an independent obligation, within 3 (three) Business Days of demand, indemnify the Bank against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

Both Borrowers waive any right either may have in any jurisdiction to pay any amount under this Contract in a currency or currency unit other than that in which it is expressed to be payable.

## Article 10

### Events of Default

#### **10.01 Right to demand repayment**

Each Borrower shall repay all or part of the Loan owing by it forthwith, together with accrued interest and all other accrued or outstanding amounts under this Contract, upon written demand being made by the Bank on it in accordance with the following provisions.

##### **10.01A Immediate demand**

The Bank may make such demand immediately:

- (a) if either Borrower or the Guarantor does not pay on the due date any amount payable pursuant to the Finance Documents at the place and in the currency in which it is expressed to be payable, unless (i) its failure to pay is caused by an administrative or technical error or a Disruption Event and (ii) payment is made within 3 (three) Business Days of its due date;
- (b) if any information or document given to the Bank by or on behalf of either Borrower or the Guarantor or any representation or statement made or deemed to be made by either Borrower or the Guarantor in application of the Finance Documents, or in connection with the negotiation or performance of the Finance Documents is, or proves to have been, incorrect, incomplete or misleading in any material respect;
- (c) if, following any default of a Borrower or the Guarantor or any other member of the Group in relation to any loan, or any obligation arising out of any financial transaction, other than the Loan:
  - (i) a Borrower or the Guarantor or any other member of the Group is required or is capable of being required or will, following expiry of any applicable contractual grace period, be required or be capable of being required to prepay, discharge, close out or terminate ahead of maturity such other loan or obligation; or
  - (ii) any financial commitment for such other loan or obligation is cancelled or suspended,

AND such other loans or obligations or commitments falling under paragraphs (i) and/or (ii) above are in an aggregate principal amount in excess of USD 50,000,000 (fifty million dollars);

- (d) if a Borrower or the Guarantor or any Material Subsidiary is unable to pay its debts as they fall due, or suspends its debts, or makes or, without prior written consent of the Bank, seeks to make a composition with its creditors;
- (e) if any corporate action, legal proceedings or other procedure or step is taken in relation to or an order is made or an effective resolution is passed for the winding up of a Borrower or the Guarantor or any Material Subsidiary, or if a Borrower or the Guarantor or any Material Subsidiary takes steps towards a substantial reduction in its capital, is declared insolvent or suspends or ceases or resolves or threatens to suspend or to cease to carry on the whole or any substantial part of its business or activities;
- (f) if an encumbrancer takes possession of, or a receiver, liquidator, administrator, administrative receiver or similar officer is appointed, whether by a court of competent

jurisdiction or by any competent administrative authority or by any person, of or over, any part of the business or assets of a Borrower or the Guarantor or any Material Subsidiary or any property forming part of the Project;

- (g) if a Borrower or Guarantor or any Material Subsidiary defaults in the performance of any obligation in respect of any other loan granted by the Bank or financial instrument entered into with the Bank;
- (h) if any distress, expropriation, attachment, execution, sequestration or other process is levied or enforced upon:
  - (i) the property (other than property forming part of the Project) of the Borrower or the Guarantor or any Material Subsidiary and is not discharged or stayed within 60 (sixty) days and the book value of the property is in excess of USD 50,000,000 (fifty million dollars); or
  - (ii) any property forming part of the Project and is not discharged or stayed within 30 (thirty) days;
- (i) if a Material Adverse Change occurs, as compared with either Borrower's or the Guarantor's condition at the date of this Contract;
- (j) if it is or becomes unlawful for a Borrower or the Guarantor to perform any of its obligations under Finance Documents or any Finance Documents are not effective in accordance with its terms or is alleged by the Borrower or the Guarantor to be ineffective in accordance with its terms;
- (k) if an ERISA Event shall have occurred that, in the opinion of the Bank, when taken together with all other such ERISA Events, could reasonably be expected to result in a Material Adverse Change; and/or
- (l) if a Borrower or the Guarantor or any member of the Group defaults in the performance of any obligation in respect of any other loan made to it from the resources of the Bank or the European Union.

#### **10.01B Demand after notice to remedy**

The Bank may also make such demand:

- (a) if a Borrower fails to comply with any obligation under this Contract not being an obligation mentioned in Article 10.01A or the Guarantor fails to comply with any obligation under the Finance Documents; or
- (b) if any fact related to a Borrower or the Project stated in the Recitals materially alters and is not materially restored and if the alteration either prejudices the interests of the Bank as lender to the Borrower or Borrowers or adversely affects the implementation or operation of the Project,

unless the non-compliance or circumstance giving rise to the non-compliance is capable of remedy and is remedied to the satisfaction of the Bank within a reasonable period of time specified in a notice served by the Bank on the Borrower or the Guarantor.

#### **10.02 Other rights at law**

Article 10.01 shall not restrict any other right of the Bank at law to require prepayment of the Loan.

### **10.03 Indemnity**

#### **10.03A Fixed Rate Tranches**

In case of demand under Article 10.01 in respect of any Fixed Rate Tranche, the Borrower shall pay to the Bank the amount demanded together with the Prepayment Indemnity on any amount of principal due to be prepaid. Such Prepayment Indemnity shall accrue from the due date for payment specified in the Bank's notice of demand and be calculated on the basis that prepayment is effected on the date so specified.

#### **10.03B Floating Rate Tranches**

In case of demand under Article 10.01 in respect of any Floating Rate Tranche, the Borrower shall pay to the Bank the amount demanded together with a sum equal to the present value of 0.15% (fifteen basis points) per annum calculated and accruing on the amount of principal due to be prepaid in the same manner as interest would have been calculated and would have accrued, if that amount had remained outstanding according to the original amortisation schedule of the Tranche, until the Interest Revision/Conversion Date, if any, or the Maturity Date.

The value shall be calculated at a discount rate equal to the Redeployment Rate applied as of each relevant Payment Date.

#### **10.03C General**

Amounts due by a Borrower pursuant to this Article 10.03 shall be payable on the date of prepayment specified in the Bank's demand.

### **10.04 Non-Waiver**

No failure or delay or single or partial exercise by the Bank in exercising any of its rights or remedies under this Contract shall be construed as a waiver of such right or remedy. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by law.

## **Article 11**

### **Law and jurisdiction**

#### **11.01 Governing Law**

This Contract and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England.

#### **11.02 Jurisdiction**

The English courts have exclusive jurisdiction to settle any dispute in connection with this Contract.

The parties agree that English courts are the most appropriate and convenient courts to settle any such dispute in connection with this Contract.

References in this Article 11.02 to a dispute in connection with this Contract include any dispute as to the existence, validity or termination of this Contract.

### **11.03 Agent of Service**

Without prejudice to any other mode of service allowed under any relevant law, each Borrower hereby appoints Xylem Water Holdings Limited, a company registered in England and Wales with company number 07618426 and having its registered office at c/o Xylem Water Services Ltd, 106 Hawley Lane, Farnborough, Hants, England GU14 8JE as its agent of service for the purposes of accepting service on its behalf of any writ, notice, order, judgement or other legal process. Each Borrower agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.

### **11.04 Forum conveniens and enforcement abroad**

Each Borrower:

- (a) waives any objection it may have to the English courts on grounds of inconvenient forum or otherwise as regards proceedings in connection with this Contract; and
- (b) agrees that a judgment or order of an English court in connection with this Contract is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

### **11.05 Place of performance**

Unless otherwise specifically agreed by the Bank in writing, the place of performance under this Contract, shall be the seat of the Bank.

### **11.06 Evidence of sums due**

In any legal action arising out of this Contract the certificate of the Bank as to any amount or rate due to the Bank under this Contract shall in the absence of manifest error be prima facie evidence of such amount or rate.

## **Article 12**

### **Final clauses**

#### **12.01 Notices to either party**

Notices and other communications given under this Contract addressed to either party to this Contract shall be made to the address or facsimile number as set out below, or to such other address or facsimile number as a party previously notifies to the other in writing:

For the Bank	<p>Attention: Operations  100 boulevard Konrad Adenauer  L-2950 Luxembourg  Facsimile no: +352 4379 67198  Email: <a href="mailto:t.kiiha@eib.org">t.kiiha@eib.org</a> and  <a href="mailto:g.schurmans@eib.org">g.schurmans@eib.org</a></p>
For Borrower 1	<p>Attention: Board of Managers  11, Breedewues,  L-1259 Senningerberg  Grand Duchy of Luxembourg  Facsimile no.: +352 2615 6860  Email: <a href="mailto:treasury@xyleminc.com">treasury@xyleminc.com</a></p>
Copies	<p>Attention: Treasurer  Xylem Inc.  1 International Drive  Rye Brook, NY 10573  United States  Facsimile no.: 914-323-5800  Email: <a href="mailto:treasury@xyleminc.com">treasury@xyleminc.com</a></p> <p>Attention: General Counsel  Xylem Inc.  1 International Drive  Rye Brook, NY 10573  United States  Facsimile no.: 914-323-5997  Email: <a href="mailto:general.counsel@xyleminc.com">general.counsel@xyleminc.com</a></p>
For Borrower 2	<p>Attention: Board of Managers  11, Breedewues,  L-1259 Senningerberg  Grand Duchy of Luxembourg  Facsimile no.: +352 2615 6860  Email: <a href="mailto:treasury@xyleminc.com">treasury@xyleminc.com</a></p>
Copies	<p>Attention: Treasurer  Xylem Inc.  1 International Drive  Rye Brook, NY 10573  United States  Facsimile no.: 914-323-5800  Email: <a href="mailto:treasury@xyleminc.com">treasury@xyleminc.com</a></p> <p>Attention: General Counsel  Xylem Inc.  1 International Drive  Rye Brook, NY 10573  United States  Facsimile no.: 914-323-5997  Email: <a href="mailto:general.counsel@xyleminc.com">general.counsel@xyleminc.com</a></p>

Any notice or other communication given under this Contract must be in writing.

Notices and other communications, for which fixed periods are laid down in this Contract or which themselves fix periods binding on the addressee, may be made by hand delivery, registered letter, email or facsimile. Such



notices and communications shall be deemed to have been received by the other party on the date of delivery in relation to a hand-delivered or registered letter, on receipt of transmission in relation to a facsimile or the date when the email is sent in relation to an email message from the Bank to a Borrower or the Guarantor, as applicable, or when confirmed by return email by an authorised officer of the Bank to have been received in readable form, in the case of an email sent by a Borrower or the Guarantor, as applicable, to the Bank.

Other notices and communications may be made by hand delivery, registered letter or facsimile or, to the extent agreed by the parties by written agreement, by email or other electronic communication.

Without affecting the validity of any notice delivered by facsimile or email according to the paragraphs above, a copy of each notice delivered by facsimile or email shall also be sent by letter to the relevant party on the next following Business Day at the latest.

Notices issued by the Borrower pursuant to any provision of this Contract shall, where required by the Bank, be delivered to the Bank together with satisfactory evidence of the authority of the person or persons authorised to sign such notice on behalf of the Borrower and the authenticated specimen signature of such person or persons.

#### **12.03 Contracts (Rights of Third Parties) Act 1999**

A person who is not a party to this Contract may not enforce or enjoy the benefit of any of its terms under the Contracts (*Rights of Third Parties*) Act 1999 and, except as provided under the Guarantee Agreement, the consent of any third party is not required for any variation (including any release or compromise of any liability) or termination of this Contract.

#### **12.04 Counterparts**

This Contract may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

#### **12.05 Invalidity**

If at any time any term of this Contract is or becomes illegal, invalid or unenforceable in any respect, or this Contract is or becomes ineffective in any respect, under the laws of any jurisdiction, such illegality, invalidity, unenforceability or ineffectiveness shall not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Contract or the effectiveness in any other respect of this Contract in that jurisdiction; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of this Contract or the effectiveness of this Contract under the laws of such other jurisdictions.

#### **12.06 Amendments**

Unless otherwise expressly provided in this Contract, any amendment to this Contract shall be made in writing and shall be signed by the parties hereto.

#### **12.07 Recitals, Schedules and Annex**

The Recitals and following Schedules form part of this Contract:

Schedule A	Technical Description and Reporting
Schedule B	Definition of EURIBOR and LIBOR
Schedule C	Forms for Borrower
Schedule D	Interest Rate Revision and Conversion
Schedule E	Conditions Precedent and Certificates of the Borrower and the Guarantor
Schedule F	Form of Solvency Certificate

The following Annex is attached hereto:

Annex	Borrower's written resolutions of the managers and authorisation of signatory
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**IN WITNESS WHEREOF** the parties hereto have caused this Contract to be executed in four originals in the English language.

At Luxembourg and Rye Brook, NY, this 28 day of October 2016.

Signed for and on behalf of  
EUROPEAN INVESTMENT BANK

-----  
/s/HANNA KARCZEWSKA

HANNA KARCZEWSKA

Head of Division

-----  
/s/TIMO KIIHA

TIMO KIIHA

Deputy Head of Division

Signed for and on behalf of  
XYLEM HOLDINGS S.À R.L.

as Borrower 1

-----  
/s/SAMIR PATEL

SAMIR PATEL

Manager

-----  
/s/PASCALE WAGNER

PASCALE WAGNER

Manager

Signed for and on behalf of  
XYLEM INTERNATIONAL S.À R.L.

as Borrower 2

-----  
/s/SAMIR PATEL

SAMIR PATEL

Manager

-----  
/s/PASCALE WAGNER

PASCALE WAGNER

Manager

Signed for and on behalf of

XYLEM INC.

as Guarantor

-----  
/s/SAMIR PATEL

SAMIR PATEL

Vice President & Treasurer

## **Project Specification and Reporting**

### **A.1 Technical Description (Article 6.02)**

#### **Purpose, Location**

The project concerns selected investments in Research, Development and Innovation (“**RDI**”) in the field of sustainable water and wastewater solutions over the period 2017-2019. The project aims at developing new capabilities and smart technologies to drive growth and sustain Xylem Group’s unique water pure-play position.

The RDI activities will be carried out at Xylem Group’s R&D units in Sweden (51%), Germany (24%), Italy (11%), UK (7%), Hungary (4%) and Austria (3%).

#### **Description**

The Project includes Research and Development activities on new products and processes as well as development on existing products (“**RDE**”). The Project activities to be carried out in six (6) R&D units and the main objectives are the following:

- *Transport*: RDE activities focusing on efficiency and functionality improvements in equipment and services involved in the movement of wastewater. Main objective is the development of non-clogging highly energy efficient wastewater submersible pumps equipped with integrated sensors and monitoring systems.
- *Treatment*: RDE activities focusing on improved water productivity and water quality and on developing advanced water solutions. Main objectives are:
  - o Development and field testing of reuse systems for the agricultural and industrial sector, with focus on the reduction of micro-pollutants (pharma and viruses) and nutrients.
  - o Integrating auto-control functions as well as interconnecting mixers and blowers to create self-adaptable/adjustable units.
- *Dewatering*: RDE activities focusing on reliable, efficient and compact draining technologies. Main objective is development of small-sized intelligent drainage pump systems - with lower weight, improved wear resistance, and integrated snoring sensors.
- *Analytics*: The activities focus on intelligent and connected (IoT based) monitoring and control devices and related services. The main objective is the development of advanced sensors and meters to enable built-in digital control, wireless communications and diagnostic capabilities.
- *Applied Water Systems (“AWS”)*: The R&D activities focus on superior energy efficient clean water pumping systems. Main objectives are:
  - o Development of a full line of new high efficiency motors in the bigger capacity range (up to 22kw)
  - o Further development of smart compact and modular clean water systems
- *Corporate R&D (Technology Council)*: These R&D activities focus on longer term, higher risk projects to build the core for future developments by the relevant divisions. The main subjects are:

- o nanotechnology-enabled sensors (lab-on-chip and biosensors);
- o additive manufacturing;
- o cloud-connectivity;
- o new business models – pay-per-use.

### **Calendar**

The Project covers the activities from January 2017 up to and including December 2019.

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## A.2 Information Duties under Article 8.01(a)

### 1. Dispatch of information: designation of the person responsible

The information below has to be sent to the Bank under the responsibility of:

	<b>Contact</b>
Company	<i>Xylem Inc.</i>
Contact person	<i>Vikram Nanwani</i>
Title	<i>Technology Director</i>
Function / Department financial and technical	-
Address	<i>11 Breedewues, L-1259 Senningerberg, Luxembourg</i>
Phone	<i>352 261 568 57</i>
Fax	-
Email	<i>Vikram.nanwani xyleminc.com</i>

The above-mentioned contact person(s) is (are) the responsible contact(s) for the time being.  
The Borrower shall inform the Bank immediately in case of any change.

### 2. Information on the Project's implementation

The Borrowers shall deliver to the Bank the following information on project progress during implementation at the latest by the deadline indicated below.

<b>Document / information</b>	<b>Deadline</b>	<b>Frequency of reporting</b>
Project Progress Report  - <i>A brief update on the Technical Description, explaining the reasons for significant changes vs. initial scope;</i> - <i>Update on the date of completion of each of the main project's components, explaining reasons for any possible delay;</i> - <i>Update on the cost of the Project, explaining reasons for any possible cost variations vs. initial budgeted cost;</i> - <i>A description of any major issue with impact on the environment;</i> - <i>Any significant issue that has occurred and any significant risk that may affect the Project's operation;</i> - <i>Any legal action concerning the Project that may be on-going.</i>	<i>31<sup>st</sup> March 2018</i>	<i>Mid-term review</i>

### 3. Information on the end of works and first year of operation

The Borrowers shall deliver to the Bank the following information on project completion and initial operation at the latest by the deadline indicated below.

Document / information	Date of delivery to the Bank
Project Completion Report, including: <ul style="list-style-type: none"> <li>- <i>A final Technical Description of the Project as completed, explaining the reasons for any significant change compared to the Technical Description in A.1.;</i></li> <li>- <i>The date of completion of each of the main project's components, explaining reasons for any possible delay;</i></li> <li>- <i>The final cost of the Project, explaining reasons for any possible cost variations vs. initial budgeted cost;</i></li> <li>- <i>Employment effects of the Project: person-days required during implementation as well as permanent new jobs created;</i></li> <li>- <i>A description of impact on the environment or social impacts</i></li> <li>- <i>Update on the Project's results/applications and comments;</i></li> <li>- <i>Any significant issue that has occurred and any significant risk that may affect the Project's operation;</i></li> <li>- <i>Any legal action concerning the Project that may be on-going.</i></li> <li>- <i>An update on the following Monitoring Indicators.</i></li> </ul>	31 <sup>st</sup> March 2021

Outputs	Units
National or international patents applications	nr/yr
National or international patents granted	nr/yr

Outcomes	
% of sales and services from new products (vitality index)	%
Return on Investment of RDI	%

Project specific indicators	
Total sales of the promoter	EUR m
Percentage of promoter's sales supported by the project	%
Total employment of the promoter	FTEs
Percentage of promoter's employment supported by the project	%
Portfolio balance (Support/VE/NP/Breakthrough)	Split in % of total EU R&D

Core result indicators	
Improved energy efficiency of products	%
Improved life-cycle-cost	%
Sustained Employment in R&D	FTEs

Language of reports	English
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### Definitions of EURIBOR and LIBOR

#### A. EURIBOR

"EURIBOR" means:

- (a) in respect of a relevant period of less than one month, the Screen Rate (as defined below) for a term of one month;
- (b) in respect of a relevant period of one or more months for which a Screen Rate is available, the applicable Screen Rate for a term for the corresponding number of months; and
- (c) in respect of a relevant period of more than one month for which a Screen Rate is not available, the rate resulting from a linear interpolation by reference to two Screen Rates, one of which is applicable for a period next shorter and the other for a period next longer than the length of the relevant period,

(the period for which the rate is taken or from which the rates are interpolated being the "**EURIBOR Representative Period**").

For the purposes of paragraphs (b) and (c) above, "available" means the rates, for given maturities, that are calculated and published by Global Rate Set Systems Ltd (GRSS), or such other service provider selected by the European Money Markets Institute (EMMI), under the sponsorship of EMMI and EURIBOR ACI, or any successor to that function of EMMI and EURIBOR ACI as determined by the Bank.

"**Screen Rate**" means the rate of interest for deposits in EUR for the relevant period as published at 11h00, Brussels time, or at a later time acceptable to the Bank on the day (the "**Reset Date**") which falls 2 (two) Relevant Business Days prior to the first day of the relevant period, on Reuters page EURIBOR 01 or its successor page or, failing which, by any other means of publication chosen for this purpose by the Bank.

If such Screen Rate is not so published, the Bank shall request the principal euro-zone offices of four major banks in the euro-zone, selected by the Bank, to quote the rate at which EUR deposits in a comparable amount are offered by each of them as at approximately 11h00, Brussels time, on the Reset Date to prime banks in the euro-zone interbank market for a period equal to the EURIBOR Representative Period. If at least 2 (two) quotations are provided, the rate for that Reset Date will be the arithmetic mean of the quotations.

If fewer than 2 (two) quotations are provided as requested, the rate for that Reset Date will be the arithmetic mean of the rates quoted by major banks in the euro-zone, selected by the Bank, at approximately 11h00, Brussels time, on the day which falls 2 (two) Relevant Business Days after the Reset Date, for loans in EUR in a comparable amount to leading European Banks for a period equal to the EURIBOR Representative Period.

If no rate is available as provided above, EURIBOR shall be the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank.

B. LIBOR USD

"LIBOR" means, in respect of USD:

- (a) in respect of a relevant period of less than one month, the Screen Rate for a term of one month;
- (b) in respect of a relevant period of one or more months for which a Screen Rate is available, the applicable Screen Rate for a term for the corresponding number of months; and
- (c) in respect of a relevant period of more than one month for which a Screen Rate is not available, the rate resulting from a linear interpolation by reference to two Screen Rates, one of which is applicable for a period next shorter and the other for a period next longer than the length of the relevant period,

(the period for which the rate is taken or from which the rates are interpolated being the "**LIBOR USD Representative Period**").

For the purposes of paragraphs (b) and (c) above, "available" means "calculated and published" under the aegis of the ICE Benchmark Administration Limited (or any successor to that function of the ICE Benchmark Administration Limited as determined by the Bank) for given maturities.

"**Screen Rate**" means the rate of interest for deposits in USD for the relevant period as set by the ICE Benchmark Administration Limited (or any successor to that function of the ICE Benchmark Administration Limited as determined by the Bank) and released by financial news providers at 11h00, London time, or at a later time acceptable to the Bank on the day (the "**Reset Date**") which falls 2 (two) London Business Days prior to the first day of the relevant period.

If such Screen Rate is not so released by any financial news provider acceptable to the Bank, the Bank shall request the principal London offices of 4 (four) major banks in the London interbank market selected by the Bank to quote the rate at which USD deposits in a comparable amount are offered by each of them at approximately 11h00, London time, on the Reset Date, to prime banks in the London interbank market for a period equal to the LIBOR USD Representative Period. If at least 2 (two) such quotations are provided, the rate will be the arithmetic mean of the quotations provided.

If fewer than 2 (two) quotations are provided as requested, the Bank shall request the principal New York City offices of 4 (four) major banks in the New York City interbank market, selected by the Bank, to quote the rate at which USD deposits in a comparable amount are offered by each of them at approximately 11h00, New York City time, on the day falling 2 (two) New York Business Days after the Reset Date, to prime banks in the European market for a period equal to the LIBOR USD Representative Period. If at least 2 (two) such quotations are provided, the rate will be the arithmetic mean of the quotations provided.

If no rate is available as provided above, LIBOR shall be the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank.

C. LIBOR GBP

"LIBOR" means, in respect of GBP:

- (a) in respect of a relevant period of less than one month, the Screen Rate for a term of one month;
- (b) in respect of a relevant period or of one or more months for which a Screen Rate is available, the applicable Screen Rate for a term for the corresponding number of months; and
- (c) in respect of a relevant period of more than one month for which a Screen Rate is not available, the rate resulting from a linear interpolation by reference to two Screen Rates, one of which is applicable for a period next shorter and the other for a period next longer than the length of the relevant period,

(the period for which the Screen Rate is taken or from which the Screen Rates are interpolated being the "**LIBOR GBP Representative Period**")

For the purposes of paragraphs (b) and (c) above, "available" means "calculated and published" under the aegis of the ICE Benchmark Administration Limited (or any successor to that function of the ICE Benchmark Administration Limited as determined by the Bank) for given maturities.

"**Screen Rate**" means the rate of interest for deposits in GBP for the relevant period as set by the ICE Benchmark Administration Limited (or any successor to that function of the ICE Benchmark Administration Limited as determined by the Bank) and released by financial news providers at 11h00, London time, or at a later time acceptable to the Bank on the day (the "**Reset Date**") on which the relevant period starts or, if that day is not a Business Day in London, on the next following day which is such a Business Day.

If such Screen Rate is not so released by any financial news provider acceptable to the Bank, the Bank shall request the principal London offices of 4 (four) major banks in the London interbank market, selected by the Bank, to quote the rate at which GBP deposits in a comparable amount are offered by each of them at approximately 11h00, London time, on the Reset Date, to prime banks in the London interbank market for a period equal to the LIBOR GBP Representative Period. If at least 2 (two) such quotations are provided, the rate will be the arithmetic mean of the quotations provided.

If fewer than 2 (two) quotations are provided as requested, the rate will be the arithmetic mean of the rates quoted at approximately 11h00, London time, on the Reset Date by major banks in London (selected by the Bank) for loans in GBP in a comparable amount to leading European banks for a period equal to the LIBOR GBP Representative Period.

If no rate is available as provided above, LIBOR shall be the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank.

D. General

For the purposes of the foregoing definitions:

- (a) "**London Business Day**" means a day on which banks are open for normal business in London and "**New York Business Day**" means a day on which banks are open for normal business in New York.
- (b) All percentages resulting from any calculations referred to in this Schedule will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with halves being rounded up.
- (c) The Bank shall inform the Borrower without delay of the quotations received by the Bank.
- (d) If any of the foregoing provisions becomes inconsistent with provisions adopted under the aegis of:
  - (i) EMMI and EURIBOR ACI (or any successor to that function of EMMI and EURIBOR ACI as determined by the Bank) in respect of EURIBOR; or
  - (ii) the ICE Benchmark Administration Limited (or any successor to that function of the ICE Benchmark Administration Limited, as determined by the Bank) in respect of LIBOR,

the Bank may by notice to the Borrower amend the provision to bring it into line with such other provisions.

**Forms for Borrower****C.1 Form of Disbursement Offer/Acceptance (Articles 1.02B and 1.02C)**

To: [Xylem Holdings S.à r.l.]/[Xylem International S.à r.l.]<sup>1</sup>

From: European Investment Bank

Date:

Subject: Disbursement Offer/Acceptance for the Finance Contract between European Investment Bank Xylem Holdings S.à r.l. and Xylem International S.à r.l. dated [●] (the "**Finance Contract**")

FI number: 85641..... Serapis number: 20150844.....

Dear Sirs,

We refer to the Finance Contract. Terms defined in the Finance Contract have the same meaning when used in this letter.

Following your request for a Disbursement Offer from the Bank, in accordance with Article 1.02B of the Finance Contract, we hereby offer to make available to you the following Tranche:

- (a) Currency and amount to be disbursed and its EUR equivalent:
- (b) Scheduled Disbursement Date:
- (c) Interest rate basis:
- (d) Interest payment periodicity:
- (e) Payment Dates:
- (f) Terms for repayment of principal:
- (g) The first and last principal repayment dates:
- (h) The Interest Revision/Conversion Date<sup>2</sup>:
- (i) The Fixed Rate or Spread, applicable until the Interest Revision/Conversion Date, if any, or until the Maturity Date:

To make the Tranche available subject to the terms and conditions of the Finance Contract, the Bank must receive a Disbursement Acceptance in the form of a copy of this Disbursement Offer duly signed on your behalf, to the following fax number [ ] no later than the Disbursement Acceptance Deadline of [time] Luxembourg time on [date].

- (a) A Borrower: [Xylem Holdings S.à r.l.]/[Xylem International S.à r.l.]<sup>3</sup>

<sup>1</sup> Delete as applicable.

<sup>2</sup> If there is any, for an amount which is not less than EUR 10 million or the equivalent thereof.

<sup>3</sup> Delete as applicable but to match the addressee of the letter.

The Disbursement Acceptance must be accompanied (if it has not been previously supplied) by:

- (i) the indication of the Borrower's bank account (with the appropriate format for the relevant currency in line with local banking practice, including the IBAN and BIC) where disbursement of the Tranche should be made; and
- (ii) evidence of the authority of the person or persons authorised to sign it on behalf of the Borrower and the specimen signature of such person or persons.

If not accepted by the above stated time, the offer contained in this document shall be deemed to have been refused and shall automatically lapse.

If you do accept the Tranche as described in this Disbursement Offer, all the related terms and conditions of the Finance Contract shall apply, in particular, the provisions of Article 1.04 (Conditions of disbursement) .

Yours faithfully,

EUROPEAN INVESTMENT BANK

We hereby accept the above Disbursement Offer:

—

For and behalf of [Xylem Holdings S.à r.l.]/[Xylem International S.à r.l.]<sup>4</sup>

Date:

We, as Guarantor under the Deed of Guarantee and Indemnity between the European Investment Bank and Xylem Inc. dated ◇, consent to the Borrower's acceptance of the above Disbursement Offer:

—

For and behalf of Xylem Inc. (as Guarantor)

Date:

<sup>4</sup> Delete as applicable but to match the addressee of the letter.

### **Interest Rate Revision and Conversion**

If an Interest Revision/Conversion Date has been included in the Disbursement Offer for a Tranche, the following provisions shall apply.

#### **A. Mechanics of Interest Revision/Conversion**

Upon receiving an Interest Revision/Conversion Request the Bank shall, during the period commencing 60 (sixty) days and ending 30 (thirty) days before the Interest Revision/Conversion Date, deliver to the Borrower an Interest Revision/Conversion Proposal stating:

- (a) the Fixed Rate and/or Spread that would apply to the Tranche, or the part thereof indicated in the Interest Revision/Conversion Request pursuant to Article 3 ; and
- (b) that such rate shall apply until the Maturity Date or until a new Interest Revision/Conversion Date, if any, and that interest is payable quarterly, semi-annually or annually in arrear on designated Payment Dates.

The Borrower may accept in writing an Interest Revision/Conversion Proposal by the deadline specified therein.

Any amendment to the Contract requested by the Bank in this connection shall be effected by an agreement to be concluded not later than 15 (fifteen) days prior to the relevant Interest Revision/Conversion Date.

#### **B. Effects of Interest Revision/Conversion**

If the Borrower duly accepts in writing a Fixed Rate or a Spread in respect of an Interest Revision/Conversion Proposal, the Borrower(s) shall pay accrued interest on the Interest Revision/Conversion Date and thereafter on the designated Payment Dates.

Prior to the Interest Revision/Conversion Date, the relevant provisions of the Contract and Disbursement Offer and Disbursement Acceptance shall apply to the entire Tranche. From and including the Interest Revision/Conversion Date onwards, the provisions contained in the Interest Revision/Conversion Proposal relating to the new interest rate or Spread shall apply to the Tranche (or part thereof) until the new Interest Revision/Conversion Date, if any, or until the Maturity Date.

#### **C. Non-fulfilment of Interest Revision/Conversion**

If the Borrowers do not submit an Interest Revision/Conversion Request or do not accept in writing the Interest Revision/Conversion Proposal for the Tranche or if the parties fail to effect an amendment requested by the Bank pursuant to Paragraph A above, the Borrower shall repay the Tranche (or part thereof) on the Interest Revision/Conversion Date, without indemnity. The Borrowers will repay on the Interest Revision/Conversion Date any part of a Tranche which is unaffected by the Interest Revision/Conversion.

**CERTIFICATES TO BE PROVIDED BY THE BORROWER AND THE GUARANTOR**

***E.1 Form of Certificate from Borrower (Article 1.04B)***

To: European Investment Bank

From: Xylem Holdings S.à r.l. and Xylem International S.à r.l.

Date:

Subject: Finance Contract between European Investment Bank, Xylem Inc., Xylem Holdings S.à r.l. and Xylem International S.à r.l. dated [●] (the "**Finance Contract**")

FI number 85641..... Serapis number 20150844.....

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Dear Sirs,

Terms defined in the Finance Contract have the same meaning when used in this letter.

For the purposes of Article 1.04B of the Finance Contract we hereby certify to you as follows:

- (a) we are in compliance with Article 6.10 and attached is evidence of such compliance and related calculations;
- (b) no Security of the type prohibited under Article 7.02 has been created or is in existence;
- (c) we have sufficient funds available to ensure the timely completion and implementation of the Project in accordance with the Technical Schedule;
- (d) there has been no material change to any aspect of the Project or in respect of which we are obliged to report under Article 8.01, save as previously communicated by us;
- (e) no Default or Compulsory Prepayment Event has occurred and is continuing unremedied or unwaived;
- (f) no litigation, arbitration administrative proceedings or investigation is current or to our knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against us or any of our subsidiaries any unsatisfied judgement or award;
- (g) the representations and warranties to be made or repeated by us under Article 6.12 are true in all material respects; and
- (h) no Material Adverse Change has occurred, as compared with our condition at the date of the Finance Contract.

Yours faithfully,

For and on behalf of Xylem Holdings S.à r.l. and Xylem International S.à r.l.

Date:

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*E.2 Form of Certificate from the Guarantor (Article 1.04B)*

*[On the Guarantor's letterhead]*

To: European Investment Bank

From: Xylem Inc.

Date: ◇

Subject: Disbursement Offer/Acceptance for the Finance Contract between European Investment Bank, Xylem Inc., Xylem Holdings S.à r.l. and Xylem International S.à r.l. dated ● (the "**Finance Contract**") and Deed of Guarantee and Indemnity between European Investment Bank and Xylem Inc. dated [●] (the "**Guarantee Agreement**")

FI number 85641..... Serapis number 20150844.....

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Dear Sirs,

Terms defined in the Finance Contract and the Guarantee Agreement have the same meaning when used in this letter.

For the purposes of Article 1.04B of the Finance Contract we hereby certify to you as follows:

- (a) no Security of the type prohibited under Article 7.02 of the Finance Contract has been created or is in existence;
- (b) there has been no material change to any aspect of the Project or in respect of which we are obliged to report under the Finance Documents, save as previously communicated by us in writing;
- (c) no Default or Compulsory Prepayment Event has occurred and is continuing unremedied or unwaived;
- (d) the representations and warranties to be made or repeated by us under the Finance Documents are true in all material respects;
- (e) no litigation, arbitration, administrative proceedings or investigation is current or to our knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against us or any of our Subsidiaries any unsatisfied judgement or award which has resulted or is reasonably likely to result in a Material Adverse Change;
- (f) no Material Adverse Change has occurred; and
- (g) no event of the type prohibited under Articles 6.06 or 6.09 of the Finance Contract has occurred.

Yours faithfully,

For and on behalf of Xylem Inc.

Date:

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### *E.3 Form of Compliance Certificate*

To: European Investment Bank

From: Xylem Holdings S.à r.l. and Xylem International S.à r.l.

Date:

Subject: Finance Contract between European Investment Bank, Xylem Inc., Xylem Holdings S.à r.l. and Xylem International S.à r.l.  
dated [●] (the "**Finance Contract**")

FI number 85641..... Serapis number 20150844.....

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Dear Sirs,

We refer to the Finance Contract. This is a Compliance Certificate. Terms defined in the Finance Contract have the same meaning when used in this Compliance Certificate.

We hereby confirm:

- (i) we are in compliance with Article 6.10. Evidence of such compliance and related calculations are attached to this Compliance Certificate;
- (ii) *[insert information regarding asset disposal]*;
- (iii) no Security of the type prohibited under Article 7.02 has been created or is in existence;
- (iv) *[insert table of the Group's current outstanding debt financing, indicating a breakdown of figures by legal entity.]*
- (v) *[no Default or Compulsory Prepayment Event has occurred and is continuing unremedied or unwaived. [If this statement cannot be made, this certificate should identify any potential event of default that is continuing and the steps, if any, being taken to remedy it].]*

Yours faithfully,

For and on behalf of Xylem Holdings S.à r.l. and Xylem International S.à r.l.

[manager] [manager]

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**Form of the Solvency Certificate**

**Xylem Holdings S.à r.l.**

***Société à responsabilité limitée***

**Registered office: 11, Breedewues, L-1259 Senningerberg, Grand-Duchy of**

**Luxembourg**

**R.C.S. Luxembourg B 77533**

**("Company 1")**

**SOLVENCY CERTIFICATE**

To: The European Investment Bank

in its capacity as the bank under the Loan Agreement (as defined below)

Dated ◇

***EUR 105,000,000 Loan Agreement***

Dear Sirs,

We, ◇ and ◇5, acting as authorized representatives of the board of managers of the Company pursuant to managers' resolutions taken on ◇, refer to a EUR 105,000,000 loan agreement dated [as of the date of this certificate] (the "**Loan Agreement**") and made between the Company and the Bank (as defined in the Loan Agreement).

As required by the Loan Agreement, we hereby certify that, based on the information collected further to appropriate searches and investigations of the Company's books and records and other information held at the Luxembourg trade and companies register and having made all due enquiry next to the Company's officers and professional advisers, as of the date of this certificate and to the best of our knowledge and belief:

1. the Company is not subject to bankruptcy (*faillite*), insolvency, voluntary or judicial liquidation (*liquidation volontaire on judiciaire*), composition with creditors (*concordat préventif de faillite*), reprieve from payment (*sursis de paiement*), controlled management (*gestion contrôlée*), fraudulent conveyance (*actio pauliana*), general settlement with creditors, reorganisation or similar laws affecting the rights of creditors generally;
2. the Company is not, on the date hereof and will not, as a result of its entry into the Loan Agreement be in a state of cessation of payments (*cessation de paiements*) and has not lost and will not, as a result of its entry into the Loan Agreement lose its commercial creditworthiness (*ébranlement de crédit*);
3. the transactions contemplated by the Loan Agreement are not caught by articles 445, 446 and 448 of the Luxembourg code of commerce and article 1167 of the Luxembourg civil code (*actio pauliana*);

5 To be signed by authorized representatives.

4. no application has been made by the Company or, as far as the Company is aware, by any other person for the appointment of a *commissaire, commissaire surveillant, juge-commissaire, liquidateur, curateur* or similar officer pursuant to any insolvency or similar proceedings; and
5. no application has been made by the Company for a voluntary or judicial winding-up or liquidation.

We further confirm in the name and on behalf of the Company that, based on our analysis of the transaction as a whole and having made due enquiry with the Company's professional advisers, as at the date of this certificate and to the best of our knowledge and belief:

(i) the Company is entering into the Loan Agreement in good faith and for the purposes of carrying on its business and there are reasonable grounds for believing that the performance by the Company of the transactions brought into effect or contemplated by the Loan Agreement will be in the best interest and for the corporate benefit of the Company; and

(ii) the entry into the Loan Agreement by the Company has been made at fair market value and on an arm's length basis.

Unless the context otherwise requires, all capitalised terms used in this certificate which are not defined herein shall have the same meaning ascribed to them in the Loan Agreement.

By:

◇

Manager

◇

Manager

**Form of the Solvency Certificate**

**Xylem International S.à r.l.**

***Société à responsabilité limitée***

**Registered office: 11, Breedewues, L-1259 Senningerberg, Grand Duchy of**

**Luxembourg**

**R.C.S. Luxembourg B 144132**

**("Company 2")**

**SOLVENCY CERTIFICATE**

To: The European Investment Bank

in its capacity as the bank under the Loan Agreement (as defined below)

Dated ◇

***EUR 105,000,000 Loan Agreement***

Dear Sirs,

We, ◇ and ◇6, acting as authorized representatives of the board of managers of the Company pursuant to managers' resolutions taken on ◇, refer to a EUR 105,000,000 loan agreement dated [as of the date of this certificate] (the "**Loan Agreement**") and made between the Company and the Bank (as defined in the Loan Agreement).

As required by the Loan Agreement, We hereby certify that, based on the information collected further to appropriate searches and investigations of the Company's books and records and other information held at the Luxembourg trade and companies register and having made all due enquiry next to the Company's officers and professional advisers, as of the date of this certificate and to the best of our knowledge and belief:

1. the Company is not subject to bankruptcy (*faillite*), insolvency, voluntary or judicial liquidation (*liquidation volontaire on judiciaire*), composition with creditors (*concordat préventif de faillite*), reprieve from payment (*sursis de paiement*), controlled management (*gestion contrôlée*), fraudulent conveyance (*actio pauliana*), general settlement with creditors, reorganisation or similar laws affecting the rights of creditors generally;
2. the Company is not, on the date hereof and will not, as a result of its entry into the Loan Agreement be in a state of cessation of payments (*cessation de paiements*) and has not lost and will not, as a result of its entry into the Loan Agreement lose its commercial creditworthiness (*ébranlement de crédit*);
3. the transactions contemplated by the Loan Agreement are not caught by articles 445, 446 and 448 of the Luxembourg code of commerce and article 1167 of the Luxembourg civil code (*actio pauliana*);

6 To be signed by authorized representatives.

4. no application has been made by the Company or, as far as the Company is aware, by any other person for the appointment of a *commissaire, commissaire surveillant, juge-commissaire, liquidateur, curateur* or similar officer pursuant to any insolvency or similar proceedings; and
5. no application has been made by the Company for a voluntary or judicial winding-up or liquidation.

We further confirm in the name and on behalf of the Company that, based on our analysis of the transaction as a whole and having made due enquiry with the Company's professional advisers, as at the date of this certificate and to the best of our knowledge and belief:

(i) the Company is entering into the Loan Agreement in good faith and for the purposes of carrying on its business and there are reasonable grounds for believing that the performance by the Company of the transactions brought into effect or contemplated by the Loan Agreement will be in the best interest and for the corporate benefit of the Company; and

(ii) the entry into the Loan Agreement by the Company has been made at fair market value and on an arm's length basis.

Unless the context otherwise requires, all capitalised terms used in this certificate which are not defined herein shall have the same meaning ascribed to them in the Loan Agreement.

By:

◇

Manager

◇

Manager

**Written resolutions of the board of managers of Xylem Holdings S.à r.l. and authorisation of signatory**

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**Written resolutions of the board of managers of Xylem International S.à r.l. and authorisation of signatory**

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**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Patrick K. Decker, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Xylem Inc. for the period ended September 30, 2016;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 1, 2016

/s/ Patrick K. Decker

Patrick K. Decker

President and Chief Executive Officer

**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, E. Mark Rajkowski, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Xylem Inc. for the period ended September 30, 2016;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 1, 2016

/s/ E. Mark Rajkowski

E. Mark Rajkowski

Senior Vice President and Chief Financial Officer

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Xylem Inc. (the "Company") for the period ended September 30, 2016 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Patrick K. Decker, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Patrick K. Decker

Patrick K. Decker

President and Chief Executive Officer

November 1, 2016

A signed original of this written statement required by Section 906 has been provided to Xylem Inc. and will be retained by Xylem Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Xylem Inc. (the "Company") for the period ended September 30, 2016 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, E. Mark Rajkowski, Senior Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ E. Mark Rajkowski

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E. Mark Rajkowski

Senior Vice President and Chief Financial Officer

November 1, 2016

A signed original of this written statement required by Section 906 has been provided to Xylem Inc. and will be retained by Xylem Inc. and furnished to the Securities and Exchange Commission or its staff upon request.