

IRRICAD: END USER AGREEMENT

1. Introduction

- 1.1 By installing, accessing or using the Software you acknowledge that you have read and understand this end user licence agreement (**End User Agreement**) and shall be deemed to have accepted this End User Agreement and agree to be bound by its terms.
- 1.2 If you do not agree with all of the terms and conditions of this End User Agreement, do not access or use the Software.
- 1.3 This End User Agreement shall be in effect from the first time you access the Software, and shall remain in effect for so long as you subscribe to the Software, unless this End User Agreement (and the Licence granted hereunder) is otherwise terminated.

2. Definitions

- 2.1 In this End User Agreement, unless the context otherwise requires:

Confidential Information includes all information exchanges between the parties to this End User Agreement, whether in writing, electronically, or orally, and expressly includes the Software, the Documentation and all Data.

Data means data included in any Database.

Database means any database to which you gain access in connection with the Software.

Distributor means an authorised third party distributor of the Software who supplied you with access to the Software and arranged for your entry into this End User Agreement.

Documentation means any documentation provided by the Licensor or Distributor to you in connection with the Software, including any manuals or other training material.

Dongle means the dongle provided by the Licensor (or Distributor, as applicable) to you to enable you to access and use the Software pursuant to the terms of your Licence and this End User Agreement.

License means the license granted to you pursuant to clause 3.1(a) or 3.1(b) (as specified in your Order Document).

Licensor means Lincoln Agritech Limited.

Major Upgrades means any major upgrade to the Software made available by the Licensor from time to time, on the Website or otherwise.

Minor Upgrades means any patch, minor upgrade or other bug fix in connection with the Software made available by the Licensor from time to time, on the Website or otherwise.

Order Document means the quote or pro-forma invoice (or similar document) issued by the Licensor or Distributor (as applicable) to the Licensee specifying the type (and, if applicable term) of the License, the license fee and any other details relating to the Software and the License granted to you pursuant to this End User Agreement.

Proprietary Rights includes all and any rights, whether registered or unregistered, in and with respect to patents, copyrights, confidential information, know-how, trade secrets, moral rights, contract or licensing rights, proprietary information (protected under contract or at law), trade names, domain names, trademarks, logos, service marks, and other similar rights in intellectual property or industrial property.

Services means any Technical Support and/or Training provided to you by the Licensor.

Software means the stand alone, graphically based, computer aided design package developed specifically for designing pressurised irrigation or water supply systems (and any related software) owned (or licensed) by the Licensor and includes any upgrade of the Software.

Technical Support means any maintenance or other technical support provided by the Licensor (or any of its representatives) to the Licensee in connection with the Software, including Minor Upgrades, but excludes any Training or Major Upgrades.

Training means any training provided by the Licensor (or any of its representatives) to the Licensee in connection with the Software. Training may be offered in a number of different forms, including online training, telephone assistance and/or on-site training by the Licensor or its local representative.

Website means www.irricad.com.

you means the party listed in the Order Document and **your** has a corresponding meaning.

3. Software

- 3.1 This End User Agreement relates to the Software and the Services. Subject to you complying with this End User Agreement the Licensor grants to you and you accept from the Licensor a non-exclusive, non-transferable, non-sub-licensable and non-assignable right, to access and use the Software:

- (a) where you have purchased a fixed term licence from the Licensor, for the fixed term specified in your Order Document and any renewal term agreed by you and the Licensor in accordance with clause 3.2; or
- (b) subject to clause 3.3, where no fixed term has been specified in your Order Document, on an on-going basis until such time as the Licence is terminated (if at all) in accordance with this End User Agreement.

- 3.2 If you wish to obtain a renewal of your fixed term Licence under clause 3.1(a), you must provide the Licensor with not less than 10 working days' notice of your wish to renew the Licence (for a period equal to the initial fixed term of your Licence). If the Licensor agrees to renew your fixed term Licence, subject to you complying with this End User Agreement, your Licence will be renewed for the relevant renewal term on the terms of this End User Agreement and any Order Documentation issued by the Licensor in connection with such renewal.

- 3.3 If you are located (and/or will access and use the Software) in the European Union, you acknowledge and agreed that any Licence granted to you pursuant to clause 3.1(b) shall be limited to an initial term of 12 months. On each anniversary of the initial 12 month term (and every 12 month renewal term thereafter), the term of your Licence will automatically renew for a further 12 month term, unless terminated by you no later than one month prior to the end of the initial term or relevant renewal term (as applicable) or otherwise by either party in accordance with the terms of this End User Agreement.

- 3.4 Your Licence is limited to the number of concurrent users of the Software specified in your Order Document and/or on your Dongle. If no number is specified then your Licence is limited to one concurrent use of the Software.

- 3.5 The Licensor will endeavour to supply your Dongle to you promptly upon confirmation of your order and payment of your licence fee, but offers no warranties in this regard

- and shall not be liable to you for any delay in the supply of your Dongle.
- 3.6 The Licensor may change the terms of this End User Agreement at any time (and shall upload such updated terms on the Website). Your continued access to and use of the Software will be deemed acceptance of the updated or amended terms from the date on which they are uploaded onto the Website. If you do not agree to the changes you should cease using the Software and return your Dongle to the Licensor (at which time this End User Agreement and the Licence granted hereunder will terminate).
- 3.7 You undertake to the Licensor that you will have in place the hardware requirements recommended on the Website before accessing and using the Software.
- 3.8 You are responsible for keeping your Dongle, codes and/or any other log-on information secure. Without limiting the foregoing, you agree to immediately inform the Licensor of any known or suspected unauthorised access or use of your Dongle or the Software.
- 3.9 You are responsible for protecting the Dongle from loss or damage. If the Dongle is lost as a result of theft, fire or natural disaster it may be replaced at cost (plus a handling fee) upon receipt, by the Licensor, of an acceptable police or fire department report. Damaged Dongles may also be replaced for a similar fee upon return to the Licensor or Distributor. Dongles that are lost in any other manner will not qualify to be replaced at cost and in these cases a new Licence would need to be purchased.
- 4. Major Upgrades**
- 4.1 With respect to any Licence granted under clause 3.1(a), you shall be entitled to receive any Major Upgrade issued by the Licensor during the initial fixed term (and any renewal term) of your Licence without payment of any additional licence fee for such Major Upgrade.
- 4.2 With respect to any Licence granted under clause 3.1(b), you shall be entitled to receive any Major Upgrade issued by the Licensor during the first three months of your Licence without payment of any additional licence fee for such Major Upgrade.
- 4.3 Subject to the rights granted under clauses 4.1 and 4.2, if you wish to licence any Major Upgrade from the Licensor, such upgrade shall be provided by the Licensor (on request) at the licence fee specified in the relevant Order Document or, if no Order Document applies, as notified by the Licensor.
- 4.4 Major Upgrades will be available for you to access once you have downloaded the relevant Major Upgrade successfully from the Website, your Dongle has been enabled by the Licensor and, if applicable, the relevant fee has been paid by you for the relevant Major Upgrade.
- 5. Technical Support**
- 5.1 With respect to any Licence granted under clause 3.1(a), Technical Support will be provided by the Licensor (in the manner that the Licensor, in its sole discretion, considers appropriate) at no cost to you during the initial term (or any renewal term) of your Licence.
- 5.2 With respect to any Licence granted under clause 3.1(b), Technical Support will be provided by the Licensor (in the manner that the Licensor (in its sole discretion) considers appropriate) at no cost to you during the first 12 months of your Licence. Thereafter, Technical Support may be provided by the Licensor (in its discretion) at the price notified by the Licensor at the time you request any such support.
- 5.3 Minor Upgrades will be available for you to access once you have downloaded the relevant Minor Upgrade successfully from the Website and your Dongle has been enabled by the Licensor in respect of the relevant Minor Upgrade.
- 6. Training**
- 6.1 Training shall be provided by Licensor (or its local representative) to you in the manner and at the times that the Licensor, in its sole discretion, considers appropriate. You may be required to pay the Licensor for Training (on a cost recovery basis).
- 7. Payment of fees**
- 7.1 In consideration of your use of the Software and the Services, you agree to pay to the Licensor or the Distributor (as applicable):
- (a) for any Licence granted pursuant to clause 3.1(a), the licence fee applicable to the fixed term of your Licence (and, if applicable, any renewal term), as specified in the relevant Order Document or as otherwise notified in writing by the Licensor. Such licence fees shall be due and payable by you prior to you accessing the Software (in respect of your initial fixed term) and within **[five working days]** of the commencement of any renewal term (if applicable);
 - (b) for any Licence granted pursuant to clause 3.1(b), the licence fee specified in the relevant Order Document. Such fee shall be due and payable by you in the manner specified in your Order Document or by the Licensor or Distributor (as applicable) or, if not specified, prior to you accessing the Software; and
 - (c) any other costs and expenses payable by you under the terms of this End User Agreement in respect of the Software or the Services.
- 7.2 If, within 30 days of receipt of your Dongle from the Licensor, you wish to return the Dongle and terminate this End User Agreement (and the Licence granted hereunder), you will (at your cost) return you Dongle to the Licensor and promptly upon receipt by the Licensor of your undamaged Dongle, the Licensor shall refund to you the licence fee paid by you under clause 7.1(a) or 7.1(b) (as applicable).
- 8. Ownership and intellectual property rights**
- 8.1 The Software is protected by copyright and other interests and they are proprietary and confidential to the Licensor (or its third party licensors, suppliers and/or distributors). All rights, title and interest in and to any Proprietary Rights in the Software, the Documentation and all Databases (including associated intellectual property rights) are and will remain vested in the Licensor or its third party licensors, suppliers or distributors (as applicable). These rights are protected by law and international treaties.
- 8.2 Except as specified in this End User Agreement, nothing contained in this End User Agreement confers on you any right or interest in, or licence or permit to use, any of the intellectual property rights in the Software or any other intellectual property rights owned by or proprietary to the Licensor or any of its third party licensors, suppliers or Distributors.

- 8.3 You acknowledge and agree that no obligation, warranty, undertaking or promise of the Licensor in this End User Agreement (if any) shall apply in respect of any third party software used in connection with (or incorporated into) the Software.
- 9. Restrictions on access and use**
- 9.1 You may not sublicense, assign, resell, share, pledge, rent or transfer any of your rights under this End User Agreement in relation to the Software or Services or any part of them.
- 9.2 You are not permitted to copy, redistribute, display, perform, reproduce, license, transfer or publish the Software, any of the Software content or any Data without the express permission of the Licensor (which may be withheld at the sole discretion of the Licensor) or as otherwise expressly permitted by your Order Document or Dongle if such item allows for more than one concurrent use of the Software.
- 9.3 You may not modify, translate, reverse engineer, decompile, disassemble or create derivative works of the Software or otherwise attempt to: (a) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Software, including, without limitation, any such mechanism used to restrict or control the functionality of (or upgrades to) the Software; or (b) derive the source code or the underlying ideas, algorithms, structure or organisation form of the Software. You will at all times, including during and after the term of this End User Agreement, keep the Software, the content associated with it (together with all access details, including passwords and codes) and any Documentation, confidential.
- 9.4 In respect of your access and use of the Software you will comply with all applicable laws and regulations and all guidelines, procedures and policies notified by the Licensor and/or the Distributor (if applicable) from time to time.
- 9.5 In connection with the Software, you agree that: (a) you may not distribute through the Software or any Database any attachments, documents or files that: (i) infringe on any copyright, patent, trade secret, trademark or other third party proprietary rights; (ii) violate any law, statute, ordinance or regulation; (iii) are defamatory, libellous or obscene; or (iv) contain viruses, trojan horses, worms, time bombs, or similar harmful programming routines; (b) you may not use the Software for any unlawful purpose; (c) you may not use the Software in a manner that may damage, disable, overburden or impair either the Software; (d) you must not attempt to gain unauthorised access to the Software or any Database, including, but without limitation, through hacking or password mining; and (e) you may not use the Software or any Database to unlawfully collect information about third parties, including without limitation, e-mail addresses.
- 10. Indemnity**
- 10.1 You agree to indemnify and hold the Licensor, its third party licensors, suppliers and distributors and each of their directors, officers and employees, harmless from all claims, liabilities, damages, losses, including legal fees and expenses, due to or arising out of your use of the Software, the Services, the Documentation, any Database and/or any breach of this End User Agreement by you (or persons for whom you are responsible). The Licensor will not be liable to you or to any other person arising out of or in connection with the grant of Licence to you or your use of the Software, the Services, the Documentation, any Database or otherwise in connection with this End User Agreement.
- 10.2** Nothing in this End User Agreement is intended to have the effect of limiting the Licensor's liability for any matter for which it is unlawful or illegal for the Licensor to exclude or attempt to exclude its liability.
- 11. Exclusion of warranties**
- 11.1 The Software, the Services, the Documentation and Databases (and all Data contained therein) are provided, to the extent permitted by law, on an "as is" basis without any warranty or condition of any kind, either express or implied. Use of the Software, the Services, the Documentation and/or any Database is at your own risk.
- 11.2 Neither the Licensor nor, if applicable, the Distributor (nor any of their representatives) warrant that:
- (a) the Software, the Services, the Documentation or any Database will meet your requirements; or
- (b) the operation of the Software, the Services, the Documentation or the Databases will be uninterrupted or error-free or secure or accurate or complete or current.
- 11.3 Without limitation, to the fullest extent allowable by law, the disclaimers in this clause 11 extend to implied warranties or conditions of merchantable quality or fitness for a particular purpose or warranties arising by statute or otherwise in law or from a course of dealing or usage of trade. Without limiting the foregoing, where the Licence is acquired for the purposes of a business, the guarantees provided under the New Zealand Consumer Guarantees Act 1993 (and any equivalent legislation outside New Zealand) do not apply.
- 12. Limitation of liability**
- 12.1 Without limiting or detracting from clause 11, if you suffer loss or damage as a result of any act or omission of the Licensor arising out of or in connection with this End User Agreement, then all claims by you against the Licensor whether in contract, negligence, tort (including negligence, breach of statutory duty or otherwise) or any other theory of liability are limited in aggregate to the Licence fee paid by you for the first 12 months of the initial term of your Licence (or, where your licence has an indefinite term, the upfront licence fee paid by you under clause 7.1(b)).
- 12.2 Under no circumstances will the Licensor, its third party licensors, suppliers or distributors or any of their directors, officers or employees be liable, whether in contract, equity, tort (including negligence, breach of statutory duty or otherwise) or any other theory of liability, for any direct or indirect: loss of profits, loss of revenue, loss of data, loss of anticipated savings; or for any indirect, special or consequential loss whatsoever (including, for the avoidance of doubt, any loss, liability or claim in connection with any crop losses resulting from your use of the Software).
- 13. Termination**
- 13.1 You may terminate this End User Agreement (and the Licence granted to you hereunder) at any time by providing written notice of such termination to the Licensor.
- 13.2 Unless expressly agreed otherwise by the Licensor (on a case by case basis), this End User Agreement (and the Licence granted to you hereunder) will terminate immediately upon written notice (including email) from the Licensor if you fail to comply with any term of this End

- User Agreement (including failure to pay any applicable fees or charges). In addition, the Licensor may terminate this End User Agreement on 30 days' notice without cause by emailing you.
- 13.3 it is acknowledged and agreed that, upon termination of this End User Agreement for any reason, you shall not be entitled to any refund of any Licence fees paid (in advance) to the Licensor (or Distributor, as applicable) pursuant to this End User Agreement.
- 13.4 Upon termination of this End User Agreement for any reason, you will immediately cease using the Software and return any Dongle and Documentation in your possession to the Licensor.
- 14. Privacy**
- 14.1 You acknowledge and agree that the Licensor may access or disclose information about you in order to:
- (a) comply with the law or legal proceedings served on it;
- (b) enforce and investigate potential breaches of this End User Agreement or any other unauthorised use of the Software; or
- (c) protect the rights, property, or safety of the Licensor, its employees, customers or the public.
- You consent to the access and disclosures outlined in this clause 14.
- 14.2 The Licensor may use technology or other means to protect the Software, protect its customers, or to prevent you from breaching this End User Agreement.
- 14.3 In order to provide you with the Software and the Services (and improve on them), the Licensor may also collect certain information about the performance of the Software and Services and your use of them. The Licensor may make use of such information to track usage and to better understand the use of the Software, improve and revise the Software based on such usage, publish industry level statistics and for customer support services.
- 15. Confidentiality**
- 15.1 Unless otherwise consented in writing by one party to the other, each party will maintain the confidentiality of all Confidential Information of the other obtained pursuant to this End User Agreement.
- 15.2 The parties agree that the provisions of clause 15.1 do not apply to any information which:
- (a) is public knowledge other than as a result of a breach of this clause 15;
- (b) is received from a third party who is in lawful receipt of the information and is able to disclose it to the recipient without restriction;
- (c) is required by law to be disclosed.
- 16. General**
- 16.1 You acknowledge and agree that the Distributor may at the direction of the Licensor, enforce any term of this End User Agreement on behalf of the Licensor.
- 16.2 This End User Agreement is intended to confer benefits on the Distributor under the Contracts (Privity) Act 1982 (or, if applicable, any equivalent legislation in the jurisdiction in which the Software is being used). The Distributor (with the separate consent of the Licensor) will be entitled to enforce those provisions of this End User Agreement that confer a benefit on it.
- 16.3 This End User Agreement and the provision of the Software, the Services, the Documentation and any Database will be governed by New Zealand law and you agree to submit to the exclusive jurisdiction of the New Zealand courts in respect of any disputes or claims arising out of or in connection with the Software, the Services and/or the Database. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.
- 16.4 Neither party shall be liable for any delay or failure to fulfil its obligations under this End User Agreement arising directly or indirectly from any circumstance beyond the reasonable control of the affected party (including, without limitation, acts of God, flood, earthquake, storm, fire, epidemic, war, embargoes, riot or civil disturbance), provided that the affected party shall:
- (a) notify the other party as soon as practicable of the events; and
- (b) use all reasonable endeavours to continue to perform its obligations and mitigate the effects of the event.
- 16.5 This End User Agreement (and your Licence) are personal to you and may not be assigned by you or otherwise dealt with by you without the prior written consent of the Licensor (which may be withheld in its absolute discretion). Any change of control in you will be deemed an assignment. The Licensor may assign this End User Agreement at any time by notice in writing to you (including by email).
- 16.6 This End User Agreement together with any Order Document provided to you by the Licensor constitute the entire agreement between you and the Licensor with respect to the use of the Software, the Services, the Documentation and any Database and supersedes all prior or contemporaneous understandings regarding such subject matter.
- 16.7 No delay, neglect, or forbearance on the part of either party in enforcing against the other party any term or condition of the End User Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the End User Agreement.
- 16.8 If any provision of this End User Agreement is determined to be illegal, invalid or otherwise unenforceable by reason of the laws of any country or area in which these terms are intended to be effective, then to the extent and within the jurisdiction in which that term is illegal, invalid or unenforceable, it shall be severed and deleted from these terms and the remaining terms shall survive and continue to be binding and enforceable.
- 16.9 Any provision necessary for the interpretation or enforcement of this End User Agreement shall survive any expiry or termination.