

**RESERVOIR AUTOMATED IRRIGATION CONTROLLERS
SOFTWARE TERMS OF USE**

Last Modified August 27, 2018

These Software Terms of Use (the “*Terms of Use*”) are a binding agreement between the Customer and its authorized users (“*Customer*”, “*you*” or “*your*”) and RESERVOIR Automated Irrigation Controllers, L.L.C., a Georgia limited liability company with principal offices at 178 Savannah Avenue, Athens, Georgia 30601 (“*Reservoir*”, “*we*”, “*us*” or “*our*”). These Terms of Use, along with the Order Form (the “*Order*”), which is an integral part hereof, govern your use of Reservoir’s software application (“*Software*”). The Software is licensed but is not sold to you, and your use of the Software is expressly pursuant to and subject to the terms and conditions of these Terms of Use. Throughout the Terms of Use, Reservoir and the Customer may each be referred to as a “*Party*”, or, collectively, the “*Parties*”.

BY DOWNLOADING, INSTALLING, ACCESSING, OR USING THE SOFTWARE YOU: (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THESE TERMS OF USE; (B) REPRESENT THAT YOU ARE OF SOUND MIND AND OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (C) ACCEPT AND AGREE TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS OF THESE TERMS OF USE.

IF YOU DO NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD, INSTALL, ACCESS, OR USE THE SOFTWARE. IF YOU HAVE ALREADY DOWNLOADED THE SOFTWARE, DELETE IT FROM YOUR COMPUTING DEVICE.

1. License Grant. Subject to the terms of these Terms of Use, Reservoir grants the Customer a limited, non-exclusive, revocable, and non-transferable license (the “*License*”) to:

- (i) download, install, access, or use the Software on mobile phones or other computing devices that are owned or otherwise controlled by the Customer (“*Computing Devices*”) strictly for the Customer’s irrigation management use; and
- (ii) access, view, and use on such Computing Device the Reservoir Content (as defined in Section 6) made available in or otherwise accessible through the Software, strictly in accordance with these Terms of Use, and any other terms and conditions applicable to such Content as set forth in Section 6.

2. License Restrictions. You agree that, in your use of the Software, you shall not:

- (i) copy the Software;
- (ii) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software or any of its parts;
- (iii) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any of its parts;
- (iv) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Software, including any copy thereof;
- (v) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software or any features or functionality of the Software, to any third party for any reason, including by making the Software available on a

network where it is capable of being accessed by more than one user device without creating unique user accounts for each user in accordance with these Terms of Use; or

- (vi) remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management or security features in or protecting the Software.

3. Use of the Software; Account Security.

(a) Reservoir Software is an integral part of Reservoir's technology driven irrigation solution, and is designed to be used in conjunction with, and to manage the Equipment you have purchased or will purchase from Reservoir.

(b) The Software provides users with the ability to manage the Equipment that will open and close the valves of your irrigation system (the "**Spokes**"). You may program up to eight (8) cycles a day for each Spoke, or you may operate the spokes manually in manual mode. The Software will also allow you to view and receive battery life information regarding each Spoke.

(c) The Software also allows users with the ability to manage your entire site. Your site (the "**Site**") is constituted of interlinked hubs (the "**Hubs**"), which communicate with Spokes and act as a passthrough for data, and Spokes at a particular location. This functionality allows you to create, save and switch custom irrigation programs, change run times, view a map of Spoke locations, and close the valves when rain occurs or is expected (at your discretion).

(d) To utilize the Software, you will need to create your account (an "**Account**"). You may be asked to provide us with at least the following information (along with any fields or data marked as mandatory as part of the Account creation process):

- (i) Your first and last name;
- (ii) Your mobile telephone number;
- (iii) Your email address; and
- (iv) A Credit or Debit card or other payment method that Reservoir will utilize to collect Fees from you as provided in Section 4.

(e) You may be able to download, access, and utilize the Software on a provisional or limited basis without registering for an Account for a limited time. In the event that you access or use the Software without registering for an Account and subsequently lose the use of your Computing Device, any information or data that you uploaded to or entered into the Software may be lost forever. We may be able to recover such information or data upon your request (if possible), but we have no obligation to do so.

(f) We reserve the right, at any time to require you to register for an Account to continue your use of the Software.

(g) AVAILABILITY OF THE SOFTWARE AND SERVICES PROVIDED BY RESERVOIR ARE PROVIDED ON A BEST-EFFORT BASIS. DUE TO THE SOFTWARE'S RELIANCE ON THIRD PARTY COMMUNICATIONS NETWORKS AND TECHNOLOGY, THE SOFTWARE MAY EXPERIENCE OCCASIONAL FAILURES OR DELAYS IN THE DELIVERY OR RECEIPT OF PROPERLY SENT DATA, INFORMATION, AND COMMUNICATIONS.

(h) We have the right to disable any Account at any time if, in our sole opinion, you have violated any provision of these Terms of Use or if your continued use of the Software may cause harm to Reservoir or to any other third party.

(i) We reserve the right to change, suspend, disable, or delete any features or functionality of the Software at any time and without notice.

4. License Fees and Payment.

(a) In consideration for the License provided hereunder, the Customer shall pay the License Fee (the “*Fee*”) provided in the Order.

(b) Reservoir reserves the right to change or restructure Fees upon thirty (30) days’ notice, in accordance with these Terms of Use and any other agreement then existing between the Parties.

(c) All payments for any in Software fees that are made by you through the Software are collected by Reservoir via the payment method that you provided through your Account. You expressly authorize Reservoir to immediately withdraw funds from your account and/or charge your payment card (as applicable) for all Fees on a recurring basis when they are incurred until you affirmatively terminate your License pursuant to Section 11 (or until the License is terminated by us).

(d) All amounts paid by you to or through the Software are final and are non-refundable for any reason.

(e) You are responsible for keeping your Account, password, information secure. You agree to notify us immediately of any unauthorized access to or use of your Account, user name, Protected Person information, or password or any other breach of security. You also agree to ensure that you exit from your Account at the end of each session. You should use particular caution when accessing your Account so as not to provide third parties with Account credentials.

5. SMS Text Message Updates.

(a) By using the Software, you give your consent and authorize us to send SMS text messages to the mobile number you have provided using an automatic telephone dialing system.

(b) You understand that your mobile phone service provider may charge you fees for text messages that we send you, and you agree that we shall have no liability for the cost of any such text messages.

(c) You are not required to authorize SMS text messages to utilize the Software, and you may withdraw your consent at any time. To withdraw your consent, simply change your notification settings in the Software or reply “STOP” to any text message you receive from us. You may also send your request to: *info@ReservoirUSA.com*.

6. Reservation of Rights. You acknowledge and agree that the Software is provided under License, and not sold, to you. You do not acquire any ownership interest or any other rights in the Software under these Terms of Use, other than to use the Software in accordance with the License granted, and subject to all terms, conditions and restrictions, under these Terms of Use. Except as expressly granted in these Terms of Use, Reservoir reserves and shall retain all rights, title, and interest in the Software and Reservoir Content, including all copyrights and copyrightable subject matter, trademarks and trademarkable subject matter, patents and patentable subject matter, trade secrets, and other intellectual property rights, both now in existence or that may be created, relating to the thereto. The Software may provide you with access to information, data, functionality and content (collectively, “*Reservoir Content*”) available and/or accessible through or via the Software. Your access to and use of such Reservoir Content is governed by these Terms of Use.

7. Collection and Use of Data and Your Information.

(a) You acknowledge that when you download, install, or use the Software, you may be required to provide certain information about yourself as a condition to downloading, installing, accessing, or using the Software or its features. Reservoir may also use automatic means to collect information about your Computing Device and your use of the Software. Furthermore, the Software may provide you with opportunities to share information about yourself with others. All information we collect through or in connection with this Software is subject to our Privacy Policy (www.ReservoirUSA.com/privacy-policy) which is incorporated herein by reference. By downloading, installing, using, and providing information to or through this Software, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

(b) Reservoir will comply with applicable data privacy laws, data breach laws and industry standards in the United States of America. Reservoir and any subcontractors to whom Data is provided shall maintain a comprehensive data security program, which shall include reasonable and appropriate technical, organizational and security measures against the destruction, loss, unauthorized access or alteration of Data in the possession of Reservoir or its subcontractors, and which shall be (i) no less rigorous than those maintained by Reservoir for its own information of a similar nature, and (ii) no less rigorous than typical security standards in the industry.

(c) Subject to the provisions above, Reservoir reserves the right to capture and utilize any and all data relating to the Software and your use thereof in an anonymized fashion to improve our solution, accumulate and distribute irrigation practices and statistics, and to improve our marketing. You hereby grant to Reservoir a sole, irrevocable, perpetual, worldwide, fully paid up, royalty free license to utilize any anonymized user data for the aforementioned purposes.

8. Geographic Restrictions. The Software and Reservoir Content are based in the State of Georgia in the United States and are provided primarily for access and use by persons located in the United States. While you may have the ability to access the Software from outside the United States, Reservoir is *not* responsible for compliance with local laws, customs, or directives outside of the United States. You acknowledge that you may not be able to access the Software or all or some of the Reservoir Content outside of the United States and that access outside the United States may not be legal by certain persons or in certain countries. If you access the Software from outside the United States, you are responsible for compliance with local laws.

9. Updates. Reservoir may, from time to time, in its sole discretion, develop and provide Software updates. These updates may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, “*Updates*”). Updates may also modify or delete in their entirety certain features and functionality. Reservoir has sole discretion to issue updates. You agree that Reservoir has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Computing Device settings, when your Computing Device is connected to the internet either:

- (i) the Software will automatically download and install all available Updates; or
- (ii) you may receive notice of or be prompted to download and install available Updates.

You agree to promptly download and install all Updates and acknowledge and agree that the Software or portions of the Software may not properly operate should you fail to do so. You further understand and agree that all Updates will be deemed part of the Software and be subject to all terms and conditions of these Terms of Use.

10. Third Party Materials. The Software may display, include or make available third-party content (including data, information, software, and other products, services, and/or materials) or provide links to third-party websites or services (“*Third Party Materials*”). You acknowledge and agree that Reservoir is not responsible for Third Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality, or any other aspect thereof. RESERVOIR DOES NOT

ASSUME AND WILL NOT HAVE ANY LIABILITY OR RESPONSIBILITY TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY THIRD-PARTY MATERIALS. Third Party Materials and links are provided solely as a convenience to you, and you access and use them entirely at your own risk and subject to such third parties' terms and conditions.

11. Term and Termination.

(a) The term of these Terms of Use commences when you download the Software and will continue in effect until terminated by you or by Reservoir as set forth in this Section 11.

(b) Subject to any other agreement which may then be existing between the Parties, you may terminate these Terms of Use by deleting the Software and all copies from your Computing Device.

(c) Subject to any other agreement which may then be existing between the Parties, Reservoir may terminate these Terms of Use at any time, without notice, and for any reason. In addition, these Terms of Use will terminate immediately and automatically without any notice if you violate any of the terms and conditions of these Terms of Use.

(d) Upon termination:

(i) all rights granted to you under these Terms of Use will be terminated;

(ii) you must cease all use of the Software and delete all copies of the Software from your Computing Device and account; and

(iii) Reservoir shall reimburse you for prorated monthly portion of Fees if Reservoir terminates these Terms of Use without a reasonable claim that you violated the terms and conditions of these Terms of Use or otherwise permitted by any other agreement which may then be existing between the Parties.

(e) Termination will not limit any of Reservoir's rights or remedies at law or in equity.

12. Representations and Warranties.

(a) Reservoir represents and warrants that it has the proper rights and authority to grant the License to you to utilize the Software.

(b) You represent, warrant, and covenant that:

(i) you shall at all times comply with applicable laws, regulations, and government directives in your use of the Software and in your communication with other users and any other third parties via or through the use of the Software; and

(ii) your use of the Software does not and will not conflict with, or infringe upon, the rights of any third party.

13. Disclaimer of Warranties.

(a) THE SOFTWARE IS PROVIDED TO YOU "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, RESERVOIR, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR

OTHERWISE, WITH RESPECT TO THE SOFTWARE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, RESERVOIR PROVIDES NO WARRANTY AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, SOFTWARES, SYSTEMS OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, BE ERROR FREE, OR THAT ANY IMMATERIAL ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

(b) RESERVOIR DOES NOT PROVIDE, OR FACILITATE THE PROVISION OF, IRRIGATION SYSTEMS, HOSES, SPRINKLERS, OR ANY DEVICES DESIGNED TO DISPENSE WATER. ACCORDINGLY, RESERVOIR MAKES NO REPRESENTATIONS AND DISCLAIMS ANY AND ALL WARRANTIES IN CONNECTION WITH ANY EQUIPMENT YOU PURCHASE FROM ANY OTHER VENDOR.

14. Limitation of Liability.

(a) IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES, LICENSORS OR SUPPLIERS, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO THE OTHER PARTY, OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSS OF GOODWILL UNDER OR IN ANY WAY RELATING TO THESE TERMS OF USE OR RESULTING FROM THE USE OF OR INABILITY TO USE THE DELIVERABLES OR THE PERFORMANCE OR NON-PERFORMANCE OF THE SOFTWARE, INCLUDING THE FAILURE OF ESSENTIAL PURPOSE, EVEN IF SUCH PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON ANY LEGAL OR EQUITABLE THEORY, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE; *PROVIDED, HOWEVER*, THAT CERTAIN STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY IN ALL CASES.

(b) EXCEPT FOR OBLIGATIONS ARISING UNDER THESE TERMS OF USE RELATED TO PAYMENT OF FEES OR CLAIMS OF INDEMNIFICATION, IN NO EVENT SHALL A PARTY'S LIABILITY HEREUNDER EXCEED THE ACTUAL AGGREGATE AMOUNT PAID BY THE CUSTOMER TO RESERVOIR PURSUANT TO THESE TERMS OF USE AND ANY OTHER AGREEMENT WHICH MAY THEN BE EXISTING BETWEEN THE PARTIES.

15. Indemnification. You agree to indemnify, defend and hold harmless Reservoir and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, arising from or relating to: (i) your use or misuse of the Software; (ii) your failure to comply with any applicable law, regulation, or government directive; (iii) your breach of these Terms of Use; or (iv) your agreement or relationship with any third party. Furthermore, you agree that the Reservoir assumes no responsibility for the information or content you submit or make available through this Software or the content that is made available to you by third parties.

16. Dispute Resolution.

(a) Except in cases where Reservoir believes you have engaged in fraud, other illegal behavior, or any other form of willful and serious misconduct, you agree that any and all disputes or

claims that have arisen or may arise between you and Reservoir arising out of or in connection with this or previous versions of these Terms of Use, including any disputes regarding the existence, validity or termination thereof, or your use of or access to the Software, shall be resolved exclusively through final and binding arbitration, rather than in court. The Federal Arbitration Act governs the interpretation and enforcement of the agreement to arbitrate set forth in this Section 16.

(b) You and Reservoir agree that each Party may bring claims against the other only on an individual basis and not as a plaintiff or class member in any purported class or representative action or proceeding. Unless both you and Reservoir agree otherwise, the Arbitrator may not consolidate or join more than one person's or party's claims, and may not otherwise preside over any form of a consolidated, representative, or class proceeding. Also, the Arbitrator may award relief (of any kind, whether monetary, injunctive, declaratory, or otherwise) only in favor of the individual party seeking relief, and only to the extent necessary to provide relief necessitated by that party's individual claim(s). Any relief awarded cannot affect other Software users.

(c) Any such arbitration shall be arranged by the American Arbitration Association ("AAA"). The arbitration panel (the "*Arbitrator*") shall consist of one (1) arbitrator. In the event that the Parties cannot reach agreement on the Arbitrator for any reason, the Parties shall request that AAA appoint the Arbitrator according to its rules and procedures, including the AAA's Supplementary Procedures for Consumer-Related Disputes (as applicable), as modified by this agreement to arbitrate. The arbitration shall take place in Fulton County, Georgia unless both you and Reservoir agree otherwise. The Arbitrator, and not any federal, state, or local court or agency, shall have the exclusive authority to resolve any dispute arising out of or in connection with these Terms of Use, the Privacy Policy, and the agreement to arbitrate set forth in this Section 16, and including the interpretation, applicability, enforceability, scope, existence, validity, formation, or termination of these Terms of Use, and any claim that any part of these Terms of Use or the agreement to arbitrate contained herein is void or voidable.

(d) If the value of the relief sought is ten thousand dollars (\$10,000.00) or less, either you or Reservoir may elect to have the arbitration conducted by telephone or based solely on written submissions, which election shall be binding on you and Reservoir, subject to the Arbitrator's discretion to require an in-person hearing (as warranted by the circumstances). Attendance at an in-person hearing may be made by telephone by you and/or Reservoir, unless the Arbitrator requires otherwise. The Arbitrator shall decide the substance of all claims in accordance with these Terms of Use, including recognized principles of equity, and will honor all claims of privilege recognized by law. The Arbitrator shall not be bound by prior rulings in any other dispute between Reservoir and another user or disputant, and shall be bound by rulings in prior disputes involving Reservoir and the same user or disputant to the extent required by applicable law. The Arbitrator's award shall be final and binding, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Payment of all filing, administration and arbitrator fees will be governed by AAA rules, unless otherwise stated in this agreement to arbitrate.

17. Applicable Law. These Terms of Use and all matters arising out of or in connection with these Terms of Use shall be governed by and interpreted according to the laws of the State of Georgia, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Georgia.

18. Entire Agreement. These Terms of Use, the Privacy Policy, and any other written agreement which may then be existing between the Parties, constitutes the entire agreement between the you and Reservoir, governs your use of the Software, and completely replaces any prior agreements between you and Reservoir in relation to the Software.

19. Waiver. No waiver (whether by act, omission, or otherwise) by any Party of any provision of these Terms of Use shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in these Terms of Use, no failure to exercise, or delay in exercising,

any right, remedy, power or privilege arising from these Terms of Use shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

20. Survival. Any provisions of these Terms of Use that by their nature should survive the expiration or termination of these Terms of Use shall so survive.

21. Severability. If any provision of these Terms of Use is invalid, void, illegal, or incapable of being enforced, such provision shall be excluded to the extent of such invalidity or unenforceability, and, to the extent permitted and possible, each provision so excluded shall be deemed replaced by a provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term. All other provisions of these Terms of Use shall remain in full force and effect.

22. Effect of Headings. Headings and subheadings appear solely for the convenience of the Parties. Headings and subheadings are not part of these Terms of Use and shall not be used to construe, interpret, expand, or limit these Terms of Use or any provision herein.

23. Third Party Beneficiaries. Nothing in these Terms of Use will create any right in any third party as against either Party or be construed for the benefit of any third party.

24. Modifications.

(a) Reservoir reserves the right, at its sole and absolute discretion, to change, modify, add to, supplement or delete any of the terms and conditions of these Terms of Use and the Privacy Policy, and to review, improve, modify or discontinue, temporarily or permanently, the Software, any portion thereof, or any content or information available through any of our websites or mobile applications, at any time, effective with or without prior notice and without any liability to Reservoir.

(b) Reservoir will endeavor to notify you of material changes by email, but will not be liable for any failure to do so. If any future changes to these Terms of Use are unacceptable to you or cause you to no longer be in compliance with these Terms of Use, you must terminate, and immediately stop using, all Reservoir websites, mobile applications, and generally the Software. Your continued use of the Software following any revision to these Terms of Use constitutes your complete and irrevocable acceptance of any and all such changes. Reservoir may change, modify, suspend, or discontinue any aspect of the Software and its services offerings at any time without notice or liability. Reservoir may also impose limits on certain features or restrict your access to parts or all of the Software without notice or liability.

25. Contacting Us. If you have any questions or concerns related to these Terms of Use, your Account, or anything else regarding the Software or our service offerings, please email us at *info@ReservoirUSA.com*, or write to us at:

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