

# Easy Automation End User Licence

## Easy Automation Pty Ltd ACN 111 162 040 LICENSOR (“LICENSOR”)

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This agreement is between “you” (the End user) and refers to you personally or on behalf of a company or other legal entity that has purchased the Easy Automation Pty system either directly or via an installer/distributor and Easy Irrigation Pty Ltd (ACN 610 508 168) the OEM and master Australian distributor of the Product.

This Licence describes your rights, restrictions and conditions to install and use the Application with the Product.

THE LICENSOR reserves the right, in its sole discretion, to modify this Licence at any time. It is your responsibility to check this Licence from time to time, as your continued access to or use of the **Products** will mean that you accept and agree to the Terms and Conditions of Use modifications.

*BY INSTALLING THE PRODUCT OR USING THE PRODUCT YOU ARE AGREEING TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF USE OF THE PRODUCT AND THE TERMS AND CONDITIONS FOR THE LICENSOR, MICROSOFT CORPORATION SOFTWARE AND ECHELON CORPORATION OPENLNS USB KEY FOR THE USE OF THEIR PRELOADED AND/OR EMBEDDED SOFTWARE LICENSES.*

*THE PRODUCT AND APPLICATION ARE NOT DESIGNED OR INTENDED FOR USE AS COMPONENTS IN CONTROLLING EQUIPMENT INTENDED FOR SURGICAL IMPLANT INTO THE BODY, OR OTHER APPLICATIONS INTENDED TO SUPPORT OR SUSTAIN LIFE, FOR USE IN FLIGHT CONTROL OR ENGINE CONTROL EQUIPMENT WITHIN AN AIRCRAFT, OR FOR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE SYSTEM AND THE APPLICATION COULD CREATE A SITUATION IN WHICH PERSONAL INJURY OR DEATH MAY OCCUR, AND YOU SHALL HAVE NO RIGHTS UNDER THIS LICENCE FOR ANY SUCH APPLICATIONS.*

**IF YOU DO NOT AGREE WITH THIS LICENCE, THEN YOU MAY NOT INSTALL OR USE ANY PART OF THE PRODUCT.**

### Return policy.

You must comply with the return policy. If you do not agree to this Licence you may return the uninstalled, unused & undamaged products within fifteen (15) calendar days from the date of purchase. You will be required to provide proof and date of purchase and return the Products for a refund or credit, whatever is deemed by Easy Irrigation as applicable.

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## 1 LICENCE

1.1 This Licence between You and THE LICENSOR governs the use of the Application on your Product.

1.2 THE LICENSOR grants to You and You accept a non-transferable and non-exclusive licence to use the Application, subject to the terms of this Licence and the following conditions:

- (a) You may use the Application only on Your Product;
- (b) use of the Application is restricted to You;
- (c) You acknowledge that Microsoft and Echelon are not a party to this Licence;
- (d) You may not:
  - (i) alter, merge, modify or adapt the Application in any way, including but not limited to disassembling or decompiling;
  - (ii) loan, rent, lease or licence the Application or any copy; or
  - (iii) transfer the Application, or any copy, in whole or in part, in any way, including but not limited to disassembling or decompiling, except as expressly provided for in this Licence.

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## 2 TERM

2.1 THE LICENSOR has the right to terminate Your Licence if You fail to comply with any term or condition of this Licence or for any reason.

2.2 Your obligations under clauses 4, 5, and 6 survive the termination of this Licence.

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## 3 LIMITED WARRANTY

3.1 THE LICENSOR warrants to You that:

- (a) except as otherwise specifically provided in this Licence and except for any condition or warranty the exclusion of which could be void or otherwise contravene the *Competition and Consumer Act 2010* (Cth) or any other applicable law (**Non-Excludable Condition**) THE LICENSOR makes no warranty or representation, either express or implied, with respect to the Application, the Data or the information accessed using Application or other goods or services it supplies, including without limitation to the quality, performance, merchantability, or fitness for a particular purpose;
- (b) except for any Non-Excludable Condition, THE LICENSOR excludes all liability for the breach of any warranty or condition of any kind in respect of the Application, the Data or the information accessed using Application or other goods or services it supplies;
- (c) where legislation implies into this Licence any Non-Excludable Condition, THE LICENSOR liability for any breach of such Non-Excludable Condition will be limited at THE LICENSOR sole discretion to one or more of the following:
  - (i) in the case of goods, any one or more of the following:

- (A) the replacement of the goods or the supply of equivalent goods;
  - (B) the repair of the goods;
  - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods;
  - (D) the payment of the cost of having the goods repaired; or
- (ii) in the case of services:
- (A) the supplying of the services again; or
  - (B) the payment of the cost of having the services supplied again.

#### **4 LIMITATION OF LIABILITY**

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4.1 To the fullest extent allowed under the *Competition and Consumer Act 2010* (Cth) or any other applicable law except for liability for any Non-Excludable Condition:

- (a) in no event will THE LICENSOR be liable for any indirect loss, consequential loss, loss of profits, loss of revenue, loss of goodwill, exemplary damages, punitive damages or special damages in connection with or arising out of use of the Application, any breach of this Licence and any negligence in THE LICENSOR performing its obligations under this Licence; and
- (b) in no event will THE LICENSOR liability to You for any claim or damage arising out of or in connection with this Licence exceed the Licence Fee.

#### **5 INTELLECTUAL PROPERTY**

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5.1 Subject to this Licence no licence, right or interest in any of THE LICENSOR's trademarks, service marks or trade names is granted to You under this Licence. If an action is brought against You claiming that the Application infringes the Intellectual Property Rights of a third party, THE LICENSOR will, at its expense, defend or, at its option, settle the action and, subject to this clause 5, indemnify You against any loss, cost or expense (including reasonable legal fees and expenses), demand or liability, whether direct or indirect, arising out of any such claim, but only if:

- (a) You notify THE LICENSOR promptly of any infringement, suspected infringement or alleged infringement;
- (b) THE LICENSOR has sole control over the defence of the claim and any negotiation for its settlement or compromise;
- (c) You make no admission of liability, do not incur any legal expenses in connection with the claim except as would be reasonable in the circumstances, or agree to any compromise or settlement without THE LICENSOR prior written consent, and take no other action that is contrary to THE LICENSOR interests; and
- (d) You provide THE LICENSOR with all available information and assistance as THE LICENSOR may reasonably require in respect of any proceedings.

5.2 If a claim described above has been asserted, THE LICENSOR will, at THE LICENSOR sole option and expense:

- (a) procure the right for You to continue using the Application; or
- (b) replace or modify the Application to eliminate the infringement while providing functionally equivalent performance.

5.3 THE LICENSOR will have no obligation to defend and indemnify You in respect of any claims that the Application, the Data or the information accessed using the Application infringes the Intellectual Property Rights of a third party, to the extent that a claim results from:

- (a) a correction to or modification of the Application, the Data or the information accessed using the Application was not provided by THE LICENSOR ;
- (b) use of the Application other than in accordance with the relevant documents or this Licence;
- (c) use of an out of date edition of the Application; or
- (d) use of the Application in conjunction with other products.

5.4 To the full extent permitted by the *Competition and Consumer Act 2010* (Cth) or any other applicable law, the remedies contained in this section constitute Your sole and exclusive remedies and THE LICENSOR entire liability under this Licence with respect to infringement of third party Intellectual Property Rights.

#### **6 INDEMNITY FROM YOU**

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You agree to indemnify and hold THE LICENSOR and Easy Irrigation (and their officers, employees, contractors, installers and agents) harmless, including costs and reasonable attorneys' fees, from any claim or demand made by any third party with respect to or arising out of

- (i) your use of the Product
- (ii) your breach of this License of use
- (iii) your violation of applicable laws or regulations.

IN NO EVENT SHALL THE LICENSOR or Easy Irrigation and/or its installers (and their officers, employees, contractors and agents) BE LIABLE FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION DIRECT, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE OR OTHER, ARISING OUT OF OR RELATING TO YOUR INSTALLATION AND /OR YOUR USE OF THE PRODUCT.

#### **7 SUPPORT AND REFUND**

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- 7.1 For the system generally, contact the installer or Easy Irrigation for support or upgrade options. Check if you have a current valid yearly maintenance agreement in place.
- 7.2 If your yearly maintenance agreement is not current and has lapsed, a fee may be charged for a new maintenance agreement.
- 7.3 A valid maintenance agreement provides all Application updates but may not necessarily

provide 3rd party software updates or new products from Microsoft and Echelon.

7.4 Support consulting via phone, email or on-site support may be provided free of charge or at the current market rate per hour.

7.5 You are entitled to a replacement or refund (at the sole discretion of Easy Irrigation) for a major system or component device failure that occurs within one year of purchase.

## 8 GENERAL

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8.1 You may not assign or transfer Your Licence.

8.2 You agree to comply with all applicable laws. You undertake to ensure that You and each and every user of the Application reads and understands the provisions of this Licence prior to using the Application and complies with the provisions of this Licence. You acknowledge and agree that You will be liable to THE LICENSOR for any breach of the provisions of this Licence by any such user.

8.3 Notwithstanding that any provision of this Licence may prove to be invalid or unenforceable, it is to be read down or severed to the extent of the invalidity or unenforceability and it does not affect the validity of the remaining provisions of this Licence which will continue in full force and effect.

8.4 A person or entity who is not a party to this Licence will have no right to enforce any term of this Licence.

8.5 You acknowledge that You have read this Licence and understood and agree to be bound by all terms and conditions. You further agree that the Licence, the Fair Use Policy and the Terms of Use comprise the complete and exclusive statement of the agreement between You and THE LICENSOR, which supersede any proposal or prior Licence, oral or written, and any other communication between You and THE LICENSOR relating to the subject matter of this

Licence. In the event of any inconsistency between the provisions of this Licence and any other agreement between You and THE LICENSOR, the provisions of this Licence will prevail.

8.6 This Licence is governed by the laws of New South Wales, Australia. You agree to submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

## 9 DICTIONARY

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**Application** means the application provided for use on the Product in accordance with the terms and conditions of this Licence and includes any updates to the application as are provided to You from time to time.

**Easy Irrigation** means Easy Irrigation Pty Ltd (ACN 610 508 168).

**Intellectual Property Rights** means all rights, other than the intellectual property rights of Windows and Echelon, whether registered or unregistered in any patent, trade mark, trade name, business name, company name, copyright, registered design or other design right or circuit layout right, know-how, confidential information or proprietary information or any similar rights of intellectual property, and any applications for, or rights to obtain or acquire, any such rights.

**THE LICENSOR** means Easy Automation Pty Ltd (ACN 111 162 040) of [ PO Box 150 Thornleigh NSW 2120 Australia].

**Product** means the Easy Automation system comprising all its electronic and hardware components with the installed firmware and software.

**Updates** means updated information for the Application, which will be supplied to You by THE LICENSOR in accordance with this Licence.

**You, Your** means the Licensee of the Application.