

## **IQ Cloud Software as a Service Agreement**

This IQ Cloud Software as a Service Agreement ("Agreement") is entered into between Rain Bird Corporation, 970 West Sierra Madre Avenue, Azusa, California 91702 ("Rain Bird") and the individual, entity or organization (collectively "Customer"). Rain Bird agrees to provide Customer Software and Services (as defined below) subject to the following terms and conditions. Please read this Agreement carefully. By (electronically) agreeing and accepting, you acknowledge that you read and understand these terms and represent that you have the authority to enter into this Agreement on behalf of Customer. If you do not have authority to enter this Agreement on behalf of the named Customer, you will be considered Customer under this Agreement.

1. **Software and Services.** Rain Bird will provide Customer with access to the IQ Cloud software ("Software") and related services and support ("Services"). You understand that Rain Bird may use a third party to host the Software and/or provide some or all the Services. To assist in the delivery and your use of the Software and Services, you agree to provide certain information, including personal information, required for the Software and Services.
2. **Use Rights and License to Intellectual Property.**
  - a. Rain Bird hereby grants to Customer a limited, non-exclusive, non-transferable license to use the Software and Services solely in accordance with Rain Bird's specifications.
  - b. Customer shall not, directly, indirectly, alone, or with another party, attempt to access the Software and Services in a manner not permitted by Rain Bird under this Agreement. Such non-permitted purposes would include attempting to (i) copy, disassemble, reverse engineer, or decompile the Software and Services; (ii) modify, create derivative works based upon, or translate the Software and Services; (iii) license, sell, rent, lease, transfer, grant any rights in or otherwise commercially exploit the Software and Services in any form to any other party; or (iv) permit any third party to do or attempt to do any of the foregoing.
  - c. Rain Bird shall retain all right, title, and interest in and to the Software and Services and any associated software, patents, copyrights, trademarks, service marks, logos, and trade names ("Intellectual Property") subject to the limited license provided by this Agreement. Customer shall use the Intellectual Property only as provided and shall not alter the Intellectual Property in any way, or act or permit action in any way that would impair Rain Bird's rights in its Intellectual Property. You acknowledge that Customer's use of the Intellectual Property shall not create in Customer or any other person any right, title, or interest in or to such Intellectual Property. Any goodwill accruing from the use of the Intellectual Property shall inure solely to the benefit of Rain Bird.
3. **Privacy.** Rain Bird collects certain information, including personal information of Customer and end users (collectively "Customer Information"), required for use of the Software and Services. Upon acceptance of this Agreement, Customer confirms that it

read, understands, and accepts Rain Bird's Privacy Policy (<http://www.rainbird.com/resources/privacy-policy>), which is incorporated herein by reference. Rain Bird and Customer shall comply with all applicable laws, regulations, and guidelines governing online privacy, including Rain Bird's Privacy Policy, in fulfilling its obligations hereunder and in collecting and using Customer Information.

4. **Customer's Responsibility for End User Information.** Customer is responsible for obtaining all authorizations, consents, releases, and permissions for its end users ("Authorized Users") necessary or desirable to provide Customer Information, to use the Services to process and store Customer Information, and to receive the Services. Customer and its Authorized Users will not submit any Customer Information or use the Services in any way that infringes, misappropriates, or violates any trademark, copyright, patent, trade secret, publicity, privacy, or other right of any third party or violates any applicable local, state or federal laws, statutes, ordinances, rules or regulations or any judicial or administrative orders. Rain Bird shall not be liable for the accuracy, completeness or authenticity of Customer Information furnished by Customer or any other third party, and shall have no obligation or responsibility to audit, check or verify the same with respect to such Customer Information. Customer shall transmit personal information by means of a secure network connection with Rain Bird. Customer shall be responsible for acquiring and maintaining at its own expense all equipment and services needed for such transmission unless otherwise agreed in writing with Rain Bird. Customer equipment and methods of transmission shall conform to Rain Bird specifications and requirements.
5. **Information Security.** Rain Bird shall store Customer Information on a secure server. Rain Bird will implement reasonable and appropriate measures designed to secure Customer Information from accidental loss and from unauthorized access, use, alteration, or disclosure. However, Rain Bird cannot guarantee that unauthorized third parties will never be able to defeat those measures or use the Customer Information for improper purposes. Customer acknowledges that it provides its Customer Information at its own risk.

Customer may access its Customer Information at any time using Customer's private password and "login" identifier. Customer is responsible for the security of the password and login identifier and for its use or misuse by its authorized users. Customers will be responsible for protecting the privacy and security of any information that they retrieve from Rain Bird and shall prevent any unauthorized or illegal use or dissemination of such information.

Upon termination of this Agreement, Rain Bird shall delete Customer's Customer Information within 30 days of the termination date.

## 6. **Financial Terms.**

- 6.1. Rain Bird shall set the Fee for access to the selected subscription of the Software and Services and will include improvements and enhancements to the Software

and Services as such improvements or enhancements become available, provided Customer is a current subscriber of the Software and Services.

- 6.2. The Fee may change at the discretion of Rain Bird, but for a current Customer, such change will not take effect until the next renewal.
- 6.3. Customer is responsible for updating tax exemption certificates and other related Customer Information. Delay to remain current as a customer may cause suspension of access to the Software and Services.
- 6.4. The Fee does not include any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use, or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). The Customer is responsible for paying all taxes for which it is responsible under this section. If Rain Bird has the legal obligation to pay or collect taxes for which the Customer is responsible under this section, Customer also will be charged the tax amount and Customer will pay that amount unless the Customer provides a valid tax exemption certificate authorized by the appropriate taxing authority.
7. **Ownership.** The Software and Services and all rights, title, and interest therein, including Intellectual Property, are and shall remain the sole and exclusive property of Rain Bird.
8. **Development of Intellectual Property.** Nothing in this Agreement shall prohibit Rain Bird from developing and pursuing Intellectual Property, including Intellectual Property related to the Software and Services.
9. **Marketing.** Except as provided herein, Customer shall not use Rain Bird Intellectual Property, including Rain Bird logos or trademarks, without Rain Bird's prior written consent.
10. **Publicity.** Without Rain Bird's prior written consent, Customer may not make any statement, press release, or other public communication regarding this Agreement or the use of the Software and Services.
11. **LIMITED WARRANTY.**

RAIN BIRD REPRESENTS AND WARRANTS THAT IT IS THE SOLE AND EXCLUSIVE OWNER OF ALL RIGHT, TITLE, AND INTEREST IN AND TO THE SOFTWARE AND SERVICES (INCLUDING THE RIGHT TO SUE FOR AND COLLECT DAMAGES FOR ALL PAST INFRINGEMENT ARISING FROM SUCH), THAT IT HAS THE RIGHT AND AUTHORITY TO ENTER INTO THIS AGREEMENT, TO GRANT THE RIGHTS CONVEYED HEREIN, AND TO BIND ITSELF TO THE TERMS OF THIS AGREEMENT.

RAIN BIRD WARRANTS THAT THE SOFTWARE AND SERVICES WILL PERFORM SUBSTANTIALLY IN CONFORMANCE WITH THE DOCUMENTATION REGARDING THE SOFTWARE AND SERVICES. RAIN BIRD DOES NOT WARRANT THAT THE SOFTWARE AND SERVICES WILL MEET ALL OF CUSTOMER'S REQUIREMENTS OR THAT THE USE OF THE SOFTWARE AND SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. THE FOREGOING WARRANTY APPLIES ONLY TO FAILURES IN OPERATION OF THE SOFTWARE AND SERVICES AS HOSTED BY RAIN BIRD AND DOES NOT APPLY TO: (I) ATTEMPTED MODIFICATIONS OR ALTERATIONS BY CUSTOMER OR ANY THIRD PARTY THAT IS NOT AUTHORIZED BY RAIN BIRD; (II) ANY OPERATION OF THE SOFTWARE AND SERVICES THAT IS OTHERWISE IN VIOLATION OF THIS AGREEMENT OR OTHER THAN IN ACCORDANCE WITH THE DOCUMENTATION FOR THE SOFTWARE AND SERVICES; OR (III) FAILURES THAT ARE CAUSED BY CUSTOMER'S SOFTWARE OR HARDWARE PRODUCTS. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, AS RAIN BIRD'S ENTIRE LIABILITY, AND AS CUSTOMER'S EXCLUSIVE REMEDY FOR ANY BREACH OF THE FOREGOING WARRANTY, RAIN BIRD WILL, AT ITS SOLE OPTION AND EXPENSE, PROMPTLY REPAIR AND UPDATE THE SOFTWARE AND SERVICES THAT FAILS TO MEET THIS LIMITED WARRANTY, OR IF RAIN BIRD IN ITS SOLE DISCRETION DETERMINES THAT IT IS UNABLE TO REPAIR AND UPDATE THE SOFTWARE AND SERVICES, RAIN BIRD WILL REFUND THE FEES PAID BY THE CUSTOMER FOR THE CURRENT TERM.

EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE RAIN BIRD SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. NEITHER RAIN BIRD NOR ITS AFFILIATES MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. RAIN BIRD EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, TO THE EXTENT ALLOWED BY APPLICABLE LAW.

FURTHER, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, RAIN BIRD MAKES NO WARRANTY OR GUARANTEE THAT ANY OF THE SOFTWARE AND SERVICES WILL OPERATE TIMELY OR UNINTERRUPTED, THAT THE SOFTWARE AND SERVICES ARE FREE FROM DEFECTS, THAT THE SOFTWARE AND SERVICES ARE DESIGNED TO MEET CUSTOMER'S REQUIREMENTS, OR THAT ANY ERRORS IN THE SOFTWARE AND SERVICES WILL BE CORRECTED. CUSTOMER'S USE OF THE SOFTWARE AND SERVICES IS AT CUSTOMER'S SOLE DISCRETION AND RISK, AND CUSTOMER IS

SOLELY RESPONSIBLE FOR ANY AND ALL DAMAGE THAT MAY ARISE FROM SUCH USE.

**12. LIMITATION OF LIABILITY.**

EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, RAIN BIRD OR ANY OF ITS AFFILIATES, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVERTISERS, LICENSORS, SHAREHOLDERS, PARTNERS, AND DISTRIBUTORS SHALL, IN NO EVENT AND UNDER NO LEGAL THEORY—WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT, WARRANTY, PRODUCTS LIABILITY, OR OTHERWISE—SHALL BE LIABLE FOR ANY DAMAGES, INCLUDING ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE USE OF THE SOFTWARE AND SERVICES, OR ANY INABILITY TO USE THE SOFTWARE AND SERVICES (INCLUDING WITHOUT LIMITATION LOSS TO PERSONAL OR REAL PROPERTY, LOST PROFITS OR REVENUES, LOSS OR INTERRUPTION OF USE, LOST OR DAMAGED DATA, REPORTS, DOCUMENTATION OR SECURITY, GOODWILL, BUSINESS INTERRUPTION, FAILURE, OR MALFUNCTION OF ANY COMPUTER OR ELECTRONIC SYSTEM, OR ANY OTHER PERSONAL AND COMMERCIAL DAMAGES OR LOSSES), EVEN IF RAIN BIRD OR ANY OF ITS AFFILIATES OR AUTHORIZED DISTRIBUTORS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT THAT THE FOREGOING LIMITATION IS NOT ENFORCEABLE WITHIN ANY APPLICABLE JURISDICTION, IN NO EVENT SHALL RAIN BIRD'S TOTAL LIABILITY TO CUSTOMER UNDER THIS AGREEMENT FOR ANY DAMAGES EXCEED THE GREATER OF: (A) THE AMOUNT CUSTOMER PAID TO RAIN BIRD IN CONNECTION WITH THE THEN-CURRENT SUBSCRIPTION AND (B) THE AMOUNT OF FIFTY DOLLARS (\$50.00 USD). THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF ANY REMEDY GRANTED HEREIN FAILS ITS ESSENTIAL PURPOSE.

**13. INTELLECTUAL PROPERTY INDEMNIFICATION.**

RAIN BIRD WILL INDEMNIFY AND HOLD CUSTOMER HARMLESS FROM ANY THIRD PARTY CLAIM BROUGHT AGAINST CUSTOMER THAT THE SOFTWARE AND/OR SERVICES, AS PROVIDED BY RAIN BIRD TO CUSTOMER UNDER THIS AGREEMENT AND USED WITHIN THE SCOPE OF THIS AGREEMENT, IS ALLEGED TO INFRINGE OR MISAPPROPRIATE ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, PROVIDED: (I) USE OF THE SOFTWARE AND SERVICES BY CUSTOMER IS IN CONFORMITY WITH THE AGREEMENT AND RELATED DOCUMENTATION; (II) THE INFRINGEMENT IS NOT CAUSED BY MODIFICATION OR ALTERATION OF THE SOFTWARE, SERVICES, AND/OR RELATED DOCUMENTATION; AND/OR (III) THE INFRINGEMENT WAS NOT CAUSED BY A COMBINATION OR USE OF

THE SOFTWARE AND/OR SERVICES WITH PRODUCTS NOT SUPPLIED BY RAIN BIRD AND INTENDED FOR USE WITH THE SOFTWARE AND/OR SERVICES. RAIN BIRD'S INDEMNIFICATION OBLIGATIONS ARE CONTINGENT UPON CUSTOMER: (I) PROMPTLY NOTIFYING RAIN BIRD IN WRITING OF THE CLAIM; (II) GRANTING RAIN BIRD SOLE CONTROL OF THE SELECTION OF COUNSEL, DEFENSE, AND SETTLEMENT OF THE CLAIM; AND (III) PROVIDING RAIN BIRD WITH REASONABLE COOPERATION, ASSISTANCE, INFORMATION, AND AUTHORITY REQUIRED FOR THE DEFENSE AND SETTLEMENT OF THE CLAIM. THIS SECTION STATES RAIN BIRD'S ENTIRE LIABILITY (AND SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY) WITH RESPECT TO CUSTOMER'S INDEMNIFICATION.

IF THE SOFTWARE AND/OR SERVICES BECOME, OR IN RAIN BIRD'S OPINION WILL LIKELY BECOME, THE SUBJECT OF A CLAIM ALLEGING INFRINGEMENT OR MISAPPROPRIATION OF A PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, RAIN BIRD WILL, AT RAIN BIRD'S OPTION AND EXPENSE, DO ONE OF THE FOLLOWING: (A) PROCURE THE RIGHTS NECESSARY FOR CUSTOMER TO MAKE CONTINUED USE OF THE SOFTWARE AND SERVICES; (B) REPLACE OR MODIFY THE SOFTWARE AND SERVICES TO MAKE IT NON-INFRINGEMENT; OR (C) TERMINATE THIS AGREEMENT, DISCONTINUE ACCESS TO THE SOFTWARE AND SERVICES, AND REFUND THE AMOUNT PAID BY CUSTOMER FOR THE USE OF THE SOFTWARE AND SERVICES FOR THE CURRENT YEAR.

14. **Effective Date, Term and Termination.** The term of this Agreement shall commence on the go-live date of the Software and Services by the Customer ("Effective Date") until either party gives written notice to terminate this Agreement or if Customer fails to make necessary payment for continued use of the Software and Services.
15. **Exclusivity.** Rain Bird will be the sole and exclusive provider of the Software and Services for the term of this Agreement.
16. **Notice.** Any notices pursuant to this Agreement shall be made in writing and delivered by email to:  
  
Rain Bird Corporation  
IQMarketing@rainbird.com
17. **Assignment.** This Agreement is non-assignable without the consent of the other party, except that Rain Bird may assign without consent: (i) its rights to receive payments; or (ii) the Agreement in connection with any sale of substantially all its assets pertaining to the Software and Services.
18. **Entire Agreement.** This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and

contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter of this Agreement. The Parties further agree that Rain Bird, at its sole discretion, may make changes to this Agreement at any time. We provide a courtesy email notification when changes are made and post the current version of this Agreement at [IQ Cloud SaaS Agreement](#). You are advised to review this Agreement online periodically for any changes. Changes to this Agreement are effective when they are posted online, regardless of whether you receive our courtesy email notification. Your continued use of the Software and Services following the posting of changes constitutes your acceptance of such changes.

19. **Amendments.** Rain Bird may, at its discretion, supplement, modify, or amend this Agreement and will notify Customer of any such supplementation, modification, or amendment. No other supplement, modification, or amendment of this Agreement will be binding, unless approved in writing by Rain Bird.
20. **Independent Contractors.** The Parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency created hereby between the Parties. Neither Party will have the power to bind the other or incur obligations on the other Party's behalf without the other Party's prior written consent.
21. **No Third-party Beneficiaries.** Other than as expressly set forth herein, no person or entity not a Party to this Agreement will be a third-party beneficiary of this Agreement.
22. **Dispute Resolution.** In the event the Parties are unable to resolve any dispute related in any way to the subject matter of this Agreement amicably, the Parties may proceed under the appropriate option below of this section.

22.1. For a Customer that is (1) an individual that is a United States citizen and a United States resident or (2) any type of entity that is organized or incorporated under laws of any state or territory of the United States, the Parties agree (a) that this Agreement shall be governed by and construed according to the laws of the State of Arizona, without reference to its conflict of law provisions, (b) that all lawsuits shall be brought only in the state or federal courts located in the City of Phoenix, Arizona (c) to submit to the personal and exclusive jurisdiction of the state and federal courts located in the City of Phoenix, Arizona, and (d) that the prevailing party shall be entitled to its fees, including reasonable attorney fees, from the other party in connection with the court proceedings.

22.2. For all other Customers, the Parties agree that (a) this Agreement, including this arbitration clause, shall be governed by and construed according to the laws of the State of Arizona, without reference to its conflict of law provisions, (b) all claims shall only be settled by arbitration in accordance with the Rules of the American Arbitration Association, (c) the arbitral tribunal shall be composed of three (3) arbitrators, (d) the place of arbitration shall be in the City of Phoenix, Arizona, (e) the proceedings shall be conducted in the English language, (f) the prevailing party in the arbitration shall

be entitled to its fees, including reasonable attorney fees, from the other party in connection with the arbitration, and (g) the decision of the arbitration shall be binding and enforceable upon the Parties in accordance with the Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York 1958).

22.3 Notwithstanding the foregoing, the Parties agree that Rain Bird, at its sole discretion, may select to proceed in accordance with section 22.1 or 22.2.

23. **Waiver.** The failure of a Party to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision.
24. **Severability.** If any part of this Agreement is determined to be invalid or unenforceable by applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement will continue in effect.
25. **Force Majeure.** Neither Party will be liable to the other for any delay or failure to perform any obligation under this Agreement if the delay or failure is due to events which are beyond the reasonable control of such Party, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval of a license by a government agency.
26. **Headings.** The headings in this Agreement are for purposes of reference only and will not in any way limit or affect the meaning or interpretation of any of the terms hereof.
27. **Survival.** Sections 2, 3, 7-10, 15, and 22 of this Agreement shall survive any termination or expiration of this Agreement. If one or more of the provisions of this Agreement for any reason shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions was never in this Agreement.
28. **Communication Opt In.** By checking the following box and providing your contact information, you consent to receive emails, updates, and other communications related to Rain Bird's products and services. If at any time you wish to opt out of future communications, please request so by emailing [IQMarketing@rainbird.com](mailto:IQMarketing@rainbird.com). If you opt out of email communications, you will not receive email notification of any changes to this Agreement.