

## IrriWatch Subscriber Agreement

This Subscriber Agreement (the “**Agreement**”) constitutes a binding agreement between you or the entity or company that you represent (“**Subscriber**”, “**you**” or “**your**”) and IrriWatch BV (“**IW**”, “**we**”, “**us**” or “**our**”), which governs your Subscription.

Your Subscription is subject to (a) the terms of this Agreement, (b) Irriwatch’s Privacy Statement found at <https://www.irriwatch.com/en/privacy-statement/> and incorporated herein by reference and (c) any additional terms outlined in the Order.

### 1. Definitions

In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

“**Covered Period**” means the period during which Irrigation Data is delivered in any given Subscription Term, as specified in the Order;

“**Initial Subscription Term**” means the initial Subscription period of one year as of the Subscription date;

“**Irrigation Data**” means spatially distributed irrigation scheduling data related to the Subscriber’s Plantation Field, with a spatial resolution of 10m, in addition to supporting and related data components which may include without limitation, depending of the Irrigation Data Package specified in the Order, soil water potential, soil moisture in the root zone, top soil moisture, actual evapotranspiration, crop coefficient and crop production as well as other parameters;

“**Irrigation Data Package**” means the Irrigation Data package selected by the Subscriber, as specified in the Order;

“**Irrigation Data Sources**” means the third party sources from where the Irrigation Data or any component thereof originates;

“**IW Platform**” means IW’s online platform to which the Subscriber subscribed;

“**Order Form**” or “**Order**” means the IW approved order form in the name of and executed by the Subscriber which specifies the commercial and technical terms of the Subscription, subject to the terms of this Agreement;

“**Plantation Field**” means the plot specified in the Order;

“**Pricing List**” means IW’s subscription pricing list as may be amended from time to time by IW, published on IW’s website <https://www.irriwatch.com/en/pricing/>;

“**Renewal Subscription Term**” means the renewed period of Subscription of one year starting at the expiry of the Initial Subscription Term and each renewed Subscription period of one year thereafter;

“**Subscriber Information**” means the information regarding the Subscriber and its Plantation Field provided by the Subscriber on the IW Platform or obtained by IW from other sources for the purpose of the Subscription;

“**Subscription**” means the yearly subscription by the Subscriber to the Irrigation Data;

“**Subscription Term**” means the Initial Subscription Term and any Renewal Subscription Term;

“**Trial Period**” means the free of charge subscription trial period of 14 days, which precedes the Initial Subscription Term; A Trial Period is granted to the Subscriber for the first three Orders only;

## **2. Services**

**2.1.** Subject to the terms of this Agreement and the Order, IW shall make available to the Subscriber the right to access daily Irrigation Data during the Covered Period of the Trial Period and the Subscription Term, through the IW Platform in the manner enabled by IW and in accordance with all applicable documentation.

**2.2.** You are solely responsible for purchasing and configuring all hardware, software and services that may be necessary or desirable for your use of the Subscription.

## **3. Access**

Each User may have one account on the IW Platform. You are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account or password. You acknowledge that IW is not responsible for third party access to your account, including, without limitation, third party access that results from theft or misappropriation of your account. IW reserves the right to suspend or cancel the Subscription or terminate your account, if it determines, in its absolute discretion that an unauthorized access to your account has occurred.

## **4. Permitted Usage**

**4.1** Irrigation Data is provided under the condition that the Subscriber is in strict compliance with the provisions of this Agreement.

**4.2** You agree to use the Subscription in compliance with all applicable laws, rules and regulations. You covenant that you will not use nor permit the use by any other party of the Irrigation Data for illegal purposes.

**4.3** The Irrigation Data is intended for your personal use.

**4.4** You shall not amend or alter the Irrigation Data in any way whatsoever.

**4.5** You undertake not to use the Irrigation Data in any way to compete with IW, nor use the Irrigation Data in any way so as to assist or allow a third party to compete with IW.

**4.6** You agree to defend, indemnify and hold harmless IW from and against:

**4.6.1** Any and all claims made by any third parties against IW in relation to this Agreement or the Irrigation Data;

**4.6.2** Any losses, damages, liabilities, costs, charges and expenses incurred by IW or a third party as a result of the use, misuse or alteration of the Irrigation Data by you or by any third party.

## **5. Subscriber Information**

**5.1.** Where the Subscriber Information provided by you is insufficient, incomplete or inaccurate (such as the crop, soil and irrigation conditions) such information may have been completed, corrected or estimated by IW or systematically on the IW Platform, and the Order Form may have been issued accordingly. You hereby agree to the foregoing and release IW from any liability in this respect.

**5.2.** IW may store and pass on any Subscriber Information, field average values and PNG files including historic time series to third parties including the Irrigation Data Sources. You hereby waive any privacy claim limiting IW's rights to store and share the Subscriber Information under this Agreement.

## **6. Intellectual Property Rights**

**6.1.** Subject to the limited rights expressly granted hereunder, we reserve all of our right, title and interest in and to the Irrigation Data and the IW Platform, including, without limitation, all source code, object code, documentation, and all modifications, enhancements, revisions, changes, copies, translations, compilations, and derivative works thereof and thereto, including all intellectual property rights related thereto. No rights are granted to you hereunder other than as expressly set forth herein

**6.2.** Except for the limited rights and licenses expressly granted to you hereunder, no other license is granted to you, no other use is permitted and IW (and its licensors) shall retain all right, title and interest in and to the Irrigation Data (including all intellectual property and proprietary rights embodied therein).

**6.3.** Any use of the Irrigation Data by the Subscriber in any material shall be accompanied by the following language:

*“This information is provided by IrriWatch BV”*

**6.4.** The remote sensing algorithms relating to the Irrigation Data shall remain the property of IW and will in no event be shared by IW with the Subscriber.

**6.5.** You agree that you shall not at any time do or allow any act which prejudices, or is likely to prejudice, IW's intellectual property rights in the Irrigation Data, or acquire, or attempt to acquire, or claim any title to interest in the IW Platform or any service conducted by IW or any other of IW proprietary rights.

## **7. Fees**

- 7.1.** In exchange for the Subscription, you shall pay to IW the annual subscription fees specified in the Order (the “**Fees**”).
- 7.2.** IW has the right to amend its Pricing List on yearly basis. It is the Subscriber’s duty to regularly consult the Pricing List and IW has no obligation to notify any amendment thereto to the Subscriber. Any renewal of the Subscription shall be subject to the applicable Fees at the time of renewal.
- 7.3.** The Fees shall be payable by the Subscriber as follows:
- (i)** 50% of the Fees at the beginning of the Subscription Term;
  - (ii)** 50% of the Fees at the expiry of the first half of the Covered Period of the Subscription Term.
- 7.4.** The Fees shall be paid by the Subscriber within a period of 14 days as of receiving IW’s invoice, at IW’s bank account indicated in the relevant invoice. The invoice shall be sent by IW to the Subscriber using the notification means provided for under Clause 10 below.
- 7.5.** The Fees shall be paid free of any tax, levy, impost, duty or other charge or withholding. If a deduction of any such tax or duty is required by law to be made by the Subscriber, the amount of the payment due from the Subscriber shall be increased to an amount which (after making any deduction) leaves an amount equal to the payment which would have been due if no deduction had been required.
- 7.6.** Failure by the Subscriber to pay the Fees within the above mentioned period shall entitle IW, at its absolute discretion, (i) either to suspend the provision of the Irrigation Data under the Subscription with immediate effect until the Fees are paid or (ii) to terminate the Subscription in accordance with Clause 11 below.

## **8. Representations and Warranties**

**8.1.** You acknowledge and agree to the following:

- 8.1.1.** IW shall only provide the Irrigation Data during the Covered Period specified in the Order.
- 8.1.2.** The Irrigation Data is provided, on an “as is” and “as available” basis without warranties of any kind. IW does not make any representations or warranties, express or implied, with respect to the Irrigation Data or the transmission, timeliness, accuracy or completeness thereof, including, without limitation, any warranties of merchantability, quality or fitness for a particular purpose or use or non- infringement, and those arising by statute or otherwise in law or from any course of dealing or usage of trade.
- 8.1.3.** The Irrigation Data may rely on Subscriber Information which is incomplete or which has been completed, updated or estimated by IW or systematically on the

IW Platform and IW does not guarantee the accuracy of such Subscriber Information nor the Irrigation Data provided in reliance upon it.

**8.1.4.** The provision of the Irrigation Data is made in reliance upon information obtained from Irrigation Data Sources, which include without limitation satellite measurements from the European Space Agency (ESA), National Oceanic and Atmospheric Administration (NOAA) and the National Aeronautics and Space Administration (NASA). Accordingly, the provision of the Irrigation Data may be disrupted due to a disruption or failure affecting the information provided by such Irrigation Data Sources, including without limitation disruption of satellite operations or US government shut down. IW bears no liability for the disruption of Irrigation Data due to any of the aforementioned reasons.

**8.1.5.** IW does not provide, and the Irrigation Data shall not be construed, as irrigation advice and the Subscriber shall make its own commercial/business/technical decisions and shall, where needed, consult its own advisors.

## **9. Limitation of Liability of IW**

**9.1.** In addition to any other limitations of liability provided for elsewhere under this Agreement, and except in case of gross negligence or willful misconduct on the part of IW, IW shall not be liable to you or to any third party for any losses, damages, costs, expenses, liabilities or claims of whatever arising in connection with the provision of Irrigation Data including:

**9.1.1.** The inaccuracy or incompleteness of the Irrigation Data;

**9.1.2.** Failure, delays or disruption in transmission of the Irrigation Data for reasons beyond IW's control or unforeseen circumstances, including without limitation, unpredictable weather conditions, natural disasters, disruption of data obtained from Irrigation Data Sources, malfunctioning of cloud computing services, any disruption or downtime of the IW Platform and other technical errors or difficulties such as telecommunications or computer failures or disruption;

**9.1.3.** The inefficiency of the Irrigation Data to serve its purpose due to unforeseen circumstances, including without limitation, unpredictable weather conditions or natural disasters;

**9.1.4.** Any errors or inaccuracies in the Order Form or the Irrigation Data resulting from the incompleteness or inaccuracy of the Subscriber Information provided by the Subscriber or its completion, updating or estimation by IW;

**9.1.5.** Any unauthorized access to the Subscriber's accounts through the IW Platform or by any means including without limitation fraudulent means and any interception, alteration or hacking of the Subscriber's information and activities through the IW Platform;

**9.1.6.** Any errors, negligence, omissions, misuse or any other actions in using the IW Platform;

**9.1.7.** Any electronic viruses that may be encountered while accessing or using the IW Platform or any damage to Subscriber's computer and/or mobile device resulting therefrom.

**9.2.** In no event shall IW be liable for any indirect, incidental, punitive or consequential damages, loss of profit, data or goodwill in connection with claims arising out of this Agreement or in connection herewith.

## **10. Notices**

Any communication by IW to the Subscriber may be made by electronic mail or letter, on the Subscriber's contact details entered by the Subscriber on the IW Platform.

Any communication or document made or delivered by one Party to another under or in connection with this Agreement will be deemed notified:

- (i) if by way of electronic mail when received in legible form;
- (ii) if by way of letter, when it has been left at the relevant recipient address or seven (7) calendar days after being deposited in the post in an envelope addressed to the recipient at the above address.

## **11. Term and Termination**

**11.1.** The Subscription shall be for the Initial Subscription Term and shall only be renewed for subsequent Renewal Subscription Terms in accordance with Clause 11.2. below.

**11.2.** Prior to the expiry of a Subscription Term, the Subscriber will receive from IW a renewal notice. If the Subscriber does not re-subscribe within the deadline specified in the renewal notice in accordance with the process described thereunder, the Subscription shall end, without further notice, at the end of the then current Subscription Term. IW shall have no obligation to renew your Subscription.

**11.3.** IW may terminate your Subscription with immediate effect and without the need for notification if you commit a breach of your obligations under this Agreement.

**11.4.** In addition to the above, IW shall be entitled, without any liability on it, to terminate the Subscription if, for reasons beyond its control, it is unable to continue providing the Irrigation Data.

## **12. Governing Law and Jurisdiction**

This Agreement and your Subscription made hereunder are governed by and shall be construed in accordance with the laws of the Netherlands. Any dispute arising out or in connection with this Agreement or any Subscription shall be submitted to the exclusive jurisdiction of the court of the Netherlands.