

## **EULA for LVE software product**

**You** have acquired a software product from **L**ake **V**alley **E**ngineering (**LVE**), a company located in Boulder, Colorado USA. International property laws and treaties protect this application, all associated files and components installable by this Setup Application.

This **E**nd **U**ser **L**icense **A**greement (EULA) constitutes a valid and binding Agreement between **LVE** and **You**, for use of the "ISC.EXE executable program and all associated support files and components provided by LVE," referred to from this point forward as the SOFTWARE. **You** must enter into this Agreement by clicking on the "I AGREE" button in order to install and use the SOFTWARE. **You** hereby agree and acknowledge that this Agreement covers all use of the SOFTWARE, where the SOFTWARE has been installed, by **You** or by a third party on your behalf. Furthermore, by installing and continuing to use the SOFTWARE **You** agree to be bound by the terms of this Agreement.

**You** acknowledge and agree that by clicking on the "I AGREE" button **You** are entering into a legally binding contract. **You** hereby agree to the use of electronic communication in order to enter into contracts, place orders and create other records and to the electronic delivery of notices, policies and records of transactions initiated or completed through the SOFTWARE. Furthermore, **You** hereby waive any rights or requirements under any laws or regulations in any jurisdiction, which require an original (non-electronic) signature or delivery or retention of non-electronic records.

This SOFTWARE is licensed to **You** in exchange for a "lease-use" rate, and has not been sold to **You**. All rights are reserved by **LVE**.

If **You** do not agree to this end user license Agreement (EULA), do not use the subject SOFTWARE and promptly remove it from your machine.

## **Grant of License**

Subject to the terms of this Agreement, **LVE** hereby grants **You** a limited, personal, non-exclusive, non-sub licensable, non-assignable, license to download, install and use the SOFTWARE on your computer(s).

- **You** are entitled to install and use this SOFTWARE on any compatible system for use in the United States, and U.S. Territories.
- **You** may install the SOFTWARE on as many machines as desired
- **You** may redistribute this installation package to any person(s), so long as said transfer includes this package in its entirety as you received it.
- **You** may legally utilize this SOFTWARE if the "lease-use" payment to **LVE** has been accommodated as prescribed by SOFTWARE algorithms and / or **LVE**.

## **Lease-Use Payment**

The SOFTWARE is not freeware, shareware, or open source and is **NOT** licensed to **You** under auspices of any other extraneous license agreement or terms.

- The SOFTWARE is classified by **LVE** as METERWARE.
  - METERWARE, in this context, means payment correlated and proportional to use.
- The SOFTWARE operates only if **LVE** Irrigation **M**anagement **R**ights (IMR) are available.
  - One IMR corresponds to one gallon of H2O delivered under SOFTWARE control.
- **LVE** may provide, at its sole discretion, each new client a one-time IMR credit, allowing new clients an opportunity to evaluate the SOFTWARE and its suitability for client irrigation needs.
  - Clients with multiple instantiations may be given the aforementioned IMR credit only one time.
  - Program functionality is subject to accurate client input on a rather extensive set and variety of control variables.
  - **LVE** will NOT reimburse client for any costs associated with evaluating the suitability of the SOFTWARE.
  - See section "Indemnification" and section "Liability" below for full detail.

- If **You** determine the SOFTWARE is not suitable, simply remove it from your system.
- If **You** utilize the SOFTWARE **You** acknowledge and accept the “**lease-use**” model and associated terms and conditions as a condition of this License Grant.
  - Additionally, **You** agree NOT to circumvent or tamper with the SOFTWARE metering system.
  - **You** may periodically purchase any quantity of IMR credit desired using an embedded payment portal.
    - **You** will have an option to purchase IMR credit upon your explicit command only.
    - Alternatively, **You** have the option to let the program, upon IMR depletion, to automatically re-purchase an IMR credit block quantity **You** define
      - This option requires retention of encrypted payment details on the local machine.
      - In accepting this Agreement, you authorize LVE to retain financial payment information on the local machine using standard commercial encryption methods.
      - See section “*Indemnification*” and section “*Liability*” below for full detail.
    - In any case, in the event local IMR credits are depleted, the SOFTWARE will cease operation until the IMR credit bank is replenished.
      - **You** agree to indemnify LVE for any application fault due to depleted IMR credits.
      - See section “*Indemnification*” and section “*Liability*” below for full detail.
    - **You** agree to authorize LVE to process your Credit Card or other payment method as authorized by **You**, using methods embedded within the SOFTWARE.
      - Acceptance of this license, implicitly grants LVE the right to process your encrypted account detail over the Internet, using the LVE company server and a Finance Gateway of LVE choice.
      - See section “*Indemnification*” and section “*Liability*” below for full detail.
  - Prepaid IMR credits are **NOT** refundable.
    - Client should limit an IMR block purchase to a quantity they are sure to utilize.
    - Client agrees to this stipulation, and will not challenge legitimate charges via their Credit Card company or other financial institution.
  - Each running instance of the SOFTWARE on a PC manages its own unique IMR credit bank.
    - IMR credit blocks are not interchangeable and are not transferable.
    - Other account options for commercial clients may be available, contact LVE directly.
- If **You** are not an active LVE client, **You** agree to remove inactive LVE SOFTWARE from your machine.

## Description of other rights and limitations

### **Limitations on Reverse Engineering, Decompilation, and Disassembly**

**You** may not reverse engineer, decompile, or disassemble the SOFTWARE. **You** will not undertake, cause, permit or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling, hacking, or cracking of SOFTWARE or any part thereof.

### **Termination**

Without prejudice to any other rights or without limiting other remedies, LVE may terminate this EULA if **You** fail to comply with the terms and conditions of this Agreement. LVE may limit, suspend, or terminate this license and your use of LVE SOFTWARE, prohibit access to the LVE website and delete your user account, with immediate effect, if we think **You** are in breach of this Agreement, creating problems, possible legal liabilities, infringing someone else’s intellectual property rights, engaging in fraudulent, or illegal activities, or for other similar reasons. LVE shall effect such termination by providing notice to **You** using the email address **You** provide during registration, and/or by preventing access to your User Account. LVE reserves the right to cancel User Accounts that have been inactive for more than one (1) year.

**You** may terminate this Agreement with immediate effect at any time, with or without cause and without recourse to the courts, provided **You** (a) acknowledge and agree that all licenses and rights to use the SOFTWARE shall terminate, and (b) will cease any and all use of the SOFTWARE

In event of Termination either by LVE or **You**, **You** must destroy all copies of the SOFTWARE. This includes removal the SOFTWARE from all hard drives, networks and other storage media and all copies of the SOFTWARE in your possession or under your control.

### **No Granting of Rights to Third Parties**

**You** will not sell, assign, rent, lease, export, import, or otherwise grant rights to third parties with regard to the LVE Software or any part thereof.

For avoidance of doubt, you are authorized to provide copies of the SOFTWARE, in its entirety, as you received it to other parties.

### **Upgrades and Recovery Media**

Unless superseded under separate cover, this EULA shall apply to all derivative SOFTWARE product distributed using any media including, but not limited to, CD-ROM, and /or WEB download.

### **Copyright**

All title and intellectual property rights in and to the SOFTWARE, any accompanying printed or (printable) materials are owned by LVE and/or its licensors. All title and intellectual property rights in and to the content which may be accessed through use of the SOFTWARE is property of the respective content owner and may be protected by application copyright or other intellectual property laws and treaties. This EULA grants **You** no right to use such content. All rights not specifically granted under the EULA are reserved by LVE.

### **Exclusive Ownership**

**You** acknowledge and agree that any and all Intellectual Property (IP) Rights to or arising from the SOFTWARE are and shall remain the exclusive property of LVE and/or its licensors. Nothing in this Agreement intends to transfer any such IP rights to **You**, or to vest any such IP rights in **You**. **You** are only entitled to the limited use of the IP rights granted to **You** in this Agreement. **You** will not take any action to jeopardize, limit or interfere with the IP rights. **You** acknowledge and agree that any unauthorized use of the IP rights is a violation of this Agreement as well as a violation of intellectual property laws, including without limitation, copyright laws and trademark laws. **You** acknowledge and understand that all title and IP rights in and to any third party content that is not contained in the SOFTWARE, but may be accessed through use of the SOFTWARE, is the property of the respective content owners and may be protected by applicable copyright or other intellectual property laws and treaties.

### **Export Restrictions**

**You** agree that **You** will not export or re-export the SOFTWARE to any country, person, or entity subject to U.S. export restrictions. **You** specifically agree not to export or re-export the SOFTWARE: I) to any country to which the U.S. has embargoed or restricted export of goods or services, or to any national of any such country, wherever located, who intends to transmit or transport the products back to such country; (II) to any person or entity who **You** know or have reason to know will utilize the SOFTWARE or any portion thereof in the design, development or production of weapons, or (III) to any person or entity who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government.

### **Product Support**

LVE offers technical support and other support services in exchange for a nominal fee. Some coverage is provided based on client payments for **lease-use** of the application. If **You** have a question please feel free to contact LVE technical support to determine support cost applicable to **You**.

### **New Versions of Software**

LVE, in its sole discretion, reserves the right to add additional features or functions, or to provide programming fixes, updates and upgrades, to the LVE Software. **You** acknowledge and agree that LVE has no obligation to make available to **You** any subsequent versions of the LVE Software. **You** also agree that **You** may have to enter into a renewed version of this Agreement, in the event **You** want to download, install or use a new version of the SOFTWARE.

## **Liability**

LVE shall **NOT** be liable for any damages **You** may incur while using the SOFTWARE. LVE shall have no liability for any indirect, special, consequential or incidental damages arising from or in connection with the use or performance of the SOFTWARE. This limitation shall apply even if any remedy fails of its essential purpose. LVE will not accept any liability in relation to the direct or indirect damages caused by (1) the release and/or the absence of release of new versions of the LVE SOFTWARE and (2) by the suspension or termination of the license or this Agreement by LVE and/or by **You**.

**YOU ACKNOWLEDGE AND AGREE THAT LVE, ITS AFFILIATES AND THE LVE STAFF WILL HAVE NO LIABILITY IN CONNECTION WITH OR ARISING FROM YOUR USE OF THE LVE SOFTWARE.**

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## **No warranties**

LVE SOFTWARE IS PROVIDED "AS IS", WITH NO WARRANTIES WHATSOEVER; LVE DOES NOT, EITHER EXPRESSED, IMPLIED OR STATUTORY, MAKE ANY WARRANTIES, CLAIMS OR REPRESENTATIONS WITH RESPECT TO THE LVE SOFTWARE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR USE OR A PARTICULAR PURPOSE. LVE FURTHER DOES NOT REPRESENT OR WARRANT THAT THE LVE SOFTWARE WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE AND ERROR-FREE OR WILL OPERATE WITHOUT PACKET LOSS, NOR DOES LVE WARRANT ANY CONNECTION TO OR TRANSMISSION FROM THE INTERNET OR TO AN FROM ANY INTERNET WEB SITE.

YOUR ONLY RIGHT OR REMEDY WITH RESPECT TO ANY PROBLEMS OR DISSATISFACTION WITH THE LVE SOFTWARE IS TO DEINSTALL AND CEASE USE OF SUCH LVE SOFTWARE.

## **Use at Your own Risk**

**You** acknowledge and agree that the entire risk arising out of the use or performance of the SOFTWARE remains with **You**, to the maximum extent permitted by law.

## **Protection of Your computer (resources) and content therein**

**You** understand that LVE SOFTWARE will use commercially reasonable efforts to protect the privacy and integrity of the computer resources (or other applicable device) and financial transaction communications; however, **You** acknowledge and agree that LVE cannot give any warranties in this respect.

## **Jurisdiction Limitations**

If **You** reside in a jurisdiction which restricts use of internet-based applications according to age, or which restricts the ability to enter into agreements such as this Agreement according to age and **You** are under such a jurisdiction and under such age limit, **You** may not enter into this Agreement and download, install or use the SOFTWARE.

As some jurisdictions do not allow some of the exclusions or limitations set forth above, some of these exclusions or limitations may not apply to **You**. In such event the liability will be limited as far as legally possible under the applicable legislation.

## **Representations**

**You** represent and warrant that **You** are authorized to enter into this Agreement and comply with its terms. Furthermore, **You** represent and warrant that **You** will at any and all times meet with your obligations hereunder, as well as any and all laws, regulations and policies that may apply to the use of the SOFTWARE.

**Indemnification**

**You** agree to indemnify, defend and hold **LVE**, and all **LVE** employees, or **LVE** contractors or suppliers, harmless from and against any and all liability and costs, including reasonable attorneys' fees incurred by said parties, in connection with or arising out of your (a) violation or breach of any term of this Agreement or any applicable law or regulation, whether or not referenced herein, or (b) violation of any rights of any third party, or (c) use or misuse of the SOFTWARE.

**Entire Agreement**

The terms and conditions of this Agreement constitute the entire Agreement between **You** and **LVE** with respect to the subject matter hereof and supersede all prior understandings and agreements in whatever form.

**Partial Invalidity**

Should any term or provision hereof be deemed invalid, void or unenforceable either in its entirety or in a particular application, the remainder of this Agreement shall nonetheless remain in full force and effect.

**No waiver**

Failure of **LVE** at any time or times to require performance of any provisions hereof shall in no manner affect its right at a later time to enforce the same unless the same is explicitly waived in writing and signed by **LVE**.

**Assignment by LVE**

**LVE** is allowed at its sole discretion to assign this Agreement or any rights hereunder to any third party, without giving prior notice.

**Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the state of Colorado in the United States without giving effect to any conflict of laws provisions, whether contained in Colorado law, or the laws of your current state or country of residence.

**Competent Court**

Any legal proceedings arising out of or relating to this Agreement will be subject to the jurisdiction of the courts of the district of Colorado.

**YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND UNDERSTAND THE RIGHTS, OBLIGATIONS, TERMS AND CONDITIONS SET FORTH HEREIN. BY CLICKING ON THE "I AGREE" BUTTON AND/OR CONTINUING TO INSTALL THE LVE SOFTWARE, YOU EXPRESSLY CONSENT TO BE BOUND BY ITS TERMS AND CONDITIONS AND GRANT TO LVE THE RIGHTS SET FORTH HEREIN.**