

**Menard Electric Cooperative**

**Irrigation Agreement for Members Enrolling in Rate 51**

This Irrigation Agreement for Members Enrolling in Rate 51, hereinafter referred to as the “Agreement,” is made effective as of \_\_\_\_\_, 20\_\_\_\_ between Menard Electric Cooperative, hereinafter referred to as the “Cooperative,” \_\_\_\_\_ [Member Name], at \_\_\_\_\_ [Member Address], hereinafter referred to as “Member,” and \_\_\_\_\_ [Vendor Name], hereinafter referred to as the “Vendor;” each referred to individually as a Party and collectively as the Parties to the Agreement.

**RECITALS**

Whereas Member is responsible for the irrigation account described herein and for which the irrigation unit may be operationally controlled by a web-based software application utilizing cellular technology;

Whereas Vendor has designed said software application and provides Member remote access to control the irrigation unit;

Whereas Cooperative provides electric service to the irrigation account in accordance with just and reasonable rate schedules established and approved by the Board of Directors of the Cooperative;

Whereas Member desires to enroll the irrigation account in the Cooperative’s Interruptible Service Rate Schedule 51 for Irrigation Systems; and,

Whereas Cooperative from time to time desires to interrupt electric service to such irrigation account in accordance with its load control program by unrestricted access to said software application and, as provided herein, Vendor and Member wish to enable load control and make such access available to Cooperative.

Now, therefore, be it resolved that the Parties hereto agree with the terms and conditions set forth herein.

**Section 1. Irrigation Unit Details**

The following attributes apply to the irrigation account and irrigation unit of Member enrolling in Cooperative Rate 51. Members enrolling more than one (1) irrigation unit shall provide such unit details in Attachment A hereto.

Irrigation Map Location Number: \_\_\_\_\_

Irrigation Controller Serial Number: \_\_\_\_\_

Member Representative Name, if applicable: \_\_\_\_\_

## **Section 2. Term**

This Agreement shall become effective on the date set forth herein and shall remain in effect until terminated by the Parties in accordance with the terms and conditions set forth herein.

## **Section 3. Obligations of Member**

- 3.1 Interested Parties. It shall be the Member's responsibility to inform any persons having an interest in this Agreement, including but not limited to landowners, tenants, corporate entities, limited liability companies, estates, and trusts. To the extent Member maintains a relationship, whether written or oral, with a representative for access to the software application controlling the irrigation unit described herein, at no time shall Member assign, transfer or relinquish obligations of Member pursuant to this Agreement to said representative or require the Cooperative to contact or coordinate with Member's representative. All references to Member herein shall also refer to Member's landowner, tenants, corporation, limited liability company, agents and assigns.
- 3.2 Rate Schedule Enrollment. Member agrees to enroll the irrigation account in the Cooperative's Interruptible Rate 51 for Irrigation Systems, comply with the requirements of, and be subject to the consequences of said Rate Schedule at all times, within the business rules, ByLaws, and policies of the Cooperative.
- 3.3 Application Subscription. Member must maintain access to a valid subscription for the software application provided by Vendor. Payment of all costs associated with subscription shall be the responsibility of Member and subscription shall at all times remain in good standing with Vendor. Member shall, within a reasonable time, provide notice to the Cooperative as provided for herein if Member's account with Vendor becomes delinquent, in default or terminated, either by action of the Member or Vendor, and regardless of fault. Member shall thereafter have ten (10) business days to renew or validate subscription with Vendor. Failure by the Member to contact the Cooperative or failure to remedy subscription delinquency, default or termination for the software application shall result in Member's account, for the irrigation unit described herein, being transferred to the Cooperative's Non-Interruptible Rate 50 for a period of no less than twelve (12) calendar months.
- 3.4 Access to Software Application. The Member shall provide Cooperative unlimited and unrestricted real-time access to the operational controls of the software application described herein. Member approves the Cooperative's use of data collected by the application and in accordance with this Agreement, including but not limited to all irrigation controller data and other relevant field management data, for the sole purpose of determining Member's compliance with this Agreement and the terms and conditions of the Rate 51 interruption requirements.

The relationship between the Vendor and the Member shall continue to be governed by the terms and conditions of the subscription agreement granting the right to access and use the Vendor's irrigation control system software, including but not limited to any terms, conditions, policies, procedures and other information posted from time to time at the Vendor's web portal or another written agreement with the Vendor. Nothing in this Agreement is intended to make the Cooperative a partner or joint legal entity with the Member, or jointly or severally liable for the acts of the Member. The Cooperative does not create or assume any obligation of the Member by reason of the relationship between Vendor and Member, in accordance with the subscription agreement with Vendor.

- 3.5 Equipment Maintenance. The Member shall maintain all equipment associated with the irrigation unit in a manner sufficient to allow the Cooperative to perform load control and electric service interruptions. If the irrigation unit loses the ability to perform load control interruption due to any equipment failure, Member shall provide notice to the Cooperative within seven (7) calendar days as

provided for herein. Thereafter, Member shall have thirty (30) calendar days to make necessary repairs, unless more time is agreed to in writing by the Cooperative to the Member; such approval shall not be unreasonably withheld. Failure by the Member to contact the Cooperative or failure by the Member to make necessary repairs within the period allowed by the Cooperative, as extended if necessary, will result in the transition of the Member account for the irrigation unit described herein to either the Cooperative's Non-Interruptible Rate 50 or the Cooperative's Interruptible Rate 52, at the Member's sole discretion. Transition to Non-Interruptible Rate 50 will be required for the current irrigation season and may involve the Cooperative charging the Member additional demand charges for billing periods previously invoiced. Transition to Interruptible Rate 52 will require Member to pay Cooperative for equipment and labor costs associated with installation of a Cooperative-owned load control device.

3.6 Software Receiver Relocation. With approval from the Cooperative, which such approval shall not be unreasonably withheld, Member is permitted to relocate Vendor's software application receiver to an alternate irrigation unit within the Cooperative's service territory. Member must provide Cooperative and Vendor with the updated service location or map location for verification and use. The irrigation account information in Section 1 or Attachment A hereto shall be updated, as applicable. Failure by the Member to contact the Cooperative prior to relocating Vendor's software application receiver shall result in Member's account for the irrigation unit described herein being transferred to the Cooperative's Non-Interruptible Rate Schedule 50, until such time as Member installs a replacement software application receiver in accordance with the conditions of Section 3.7 for the irrigation unit and account described herein from which the receiver was removed. As an alternative, Member may pay Cooperative for equipment and labor costs associated with installation of a Cooperative-owned load control device at the irrigation unit and account described herein and have the account transferred to the Cooperative's Interruptible Rate Schedule 52. In this alternative, Member agrees to (x) terminate this Agreement in accordance with the provision set forth herein, or (y) accept revisions to Attachment A that disassociate the Member with the Vendor controller subject to this Agreement. In either case, the irrigation unit described herein and account newly associated with Rate Schedule 52 for that service location shall become ineligible for enrollment in Rate Schedule 51 for a period of no less than five (5) years from the date of transition.

3.7 Software Receiver Replacement. With approval from the Cooperative, which such approval shall not be unreasonably withheld, Member is permitted to replace the Vendor's software application receiver. Member must provide Cooperative with pre-qualified Vendor name, if different, and serial number of the replacement controller which can be verified by the Cooperative for use. Subject to the Cooperative's acceptance of the replacement receiver, Member's account shall continue under Rate Schedule 51. The irrigation account information in Section 1 or Attachment A to this Agreement, as applicable, shall be updated in accordance with Section 7.11 hereto. Failure by the Member to contact the Cooperative for replacement approval may result in the Member account for the irrigation unit described herein being transferred to the Cooperative's Non-Interruptible Rate Schedule 50.

#### **Section 4. Obligations of Cooperative**

Conditions of Service. Electric service shall be provided by the Cooperative in accordance with the Irrigation Rate Schedule incorporated herein as Attachment B.

## **Section 5. Obligations of Vendor**

- 5.1 Prequalification. Vendor shall become pre-qualified by Cooperative in accordance with the provisions of this Agreement. Cooperative shall have all rights provided hereunder to reassess the software application for functionality on a periodic basis.
- 5.2 Mutual Benefit. Vendor recognizes the benefit the Cooperative's load control program provides Member. Vendor agrees to work with the Cooperative to ensure Member's satisfaction and access to Vendor's software application.
- 5.3 Software Application and Functionality. Vendor shall ensure that the software application and database are updated on a regular basis to provide the operational functionality intended by this Agreement. The software application must meet the following requirements for qualification by the Cooperative.
- 5.3.1 Cooperative must be able to test all aspects of the software application related to load control.
- 5.3.2 Software application and Vendor's database must be accessible by the Cooperative at all times.
- 5.3.3 The Cooperative must be provided login credentials to an account which enables its ability to:
- a. Associate an irrigation system's unique identifier (e.g., serial number) to a map location number assigned by the Cooperative;
  - b. View geographical location of the irrigation system (e.g., longitude and latitude coordinates);
  - c. Cluster irrigation systems into a Cooperative-defined group(s);
  - d. Submit a text notification to the Member;
  - e. Control an irrigation system or a defined group of irrigation systems in real-time, while allowing Member to concurrently override Cooperative control curtailment;
  - f. Schedule an irrigation system or a defined group of irrigation systems to turn off and be inhibited for a Cooperative-defined period of time (e.g., set load control period start time and duration);
  - g. Initiate a cold load pickup (e.g., staggered startup delay or random release);
  - h. Report irrigation systems which returned to service (overridden) during a period defined by the Cooperative. Report shall be available in a format acceptable to the Cooperative and include date and time system was overridden;
  - i. Report irrigation systems that failed to curtail during a period defined by the Cooperative and wherein such failures were unrelated to an override action taken by the Member (e.g., equipment or communications issues).
  - j. Provide indication to the Cooperative if the Member's subscription is terminated, by message, alert or database indication.

## **Section 6. Notices**

Any notices required in accordance with this Agreement shall be delivered:

If to Cooperative:

Menard Electric Cooperative  
P.O. Box 200  
14300 State Highway 97  
Petersburg, IL 62675  
Attn: Engineering Manager  
Phone: (217) 632-7746

If to Member:

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_

If to Vendor:

Vendor Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_

Notices shall be in writing and delivered by hand delivery, United States mail, overnight courier service, electronically or other documentary form. A Party may change its address or phone by providing notice thereof to the other Parties in accordance with this Section 6.

### **Section 7. Miscellaneous**

7.1 Remedies. The Parties agree that the covenants contained in this Agreement are of the essence of this Agreement, that such covenants are reasonable and necessary to protect and preserve the interests and properties of the Cooperative and the business of the Cooperative; and that irreparable loss and damage will be suffered by the Cooperative should the other Parties to this Agreement breach any such covenants. The Cooperative and all other Parties agree and consent that, in addition to all the remedies provided at law or in equity, the Cooperative shall be entitled to a temporary restraining order and temporary and permanent injunctions to prevent a breach or contemplated breach of any such covenants. Except as expressly provided herein, the existence of any claim, demand, action of cause of action of the Cooperative or the other Parties hereto shall not constitute a defense to the enforcement by the Cooperative of the covenants and agreements herein. Notwithstanding the foregoing, each of the Parties shall be entitled to enforce their or its rights hereunder and to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights to which such Party may be

lawfully entitled at law or in equity. The Parties further agree and acknowledge that money damages may not be an adequate remedy for breach by Member or Vendor and that the Cooperative may, in addition to all other rights under this Agreement, in its sole and absolute discretion, apply to any court of law or equity of competent jurisdiction for specific performance and/or injunctive relief in order to enforce or prevent any violations of the provisions of this Agreement.

- 7.2 Severability. The terms of this Agreement are severable, and if any particular portion is adjudicated or determined to be invalid or unenforceable, such determination shall apply only to that portion of the Agreement and the balance of this Agreement shall nevertheless be enforceable to the full extent permissible under the laws of the State of Illinois.
- 7.3 Entire Agreement. This Agreement contains the complete agreement concerning the arrangement and relationship between the Parties and shall supersede all other agreements among the Parties.
- 7.4 Termination. Any of the Parties shall have the right to terminate this Agreement upon thirty (30) days written notice to the other Parties.
- 7.5 Survival. The terms of this Agreement shall be binding upon the heirs, successors, and assigns of the Parties hereto. The Parties agree that the terms of Section 3.6 Software Receiver Relocation shall survive the termination of this Agreement.
- 7.6 Governing Law and Jurisdiction. It is the intention of the Parties hereto that this Agreement and the performance hereunder and all suits and other proceedings hereunder shall be construed in accordance with, under and pursuant to the laws of the State of Illinois. Any action or proceeding brought arising out of, in connection with this Agreement, shall be brought in Menard County, Illinois.
- 7.7 Relationship. The Parties intend that nothing herein shall cause this Agreement to be interpreted as creating any partnership, joint venture, employment or other similar relationships or enterprises.
- 7.8 Indemnification. Member and Vendor shall indemnify and hold the Cooperative harmless from and against: (i) all claims, liabilities, suits, damages, costs and expenses arising from this Agreement or from the conduct of Member or Vendor or from any activity, work or things done by Member or Vendor; (ii) all claims arising from any breach or default in the performance of any obligation on Member or Vendor's part to be performed under the terms of this Agreement, or arising from any negligence of Member or Vendor, or any of Member or Vendor's agents or employees, or from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and (iii) any and all costs or expenses incurred by the Cooperative as a result of Member or Vendor's failure to perform any of their obligations hereunder. In case any action or proceeding is brought against the Cooperative by reason of any claim described above, Member and/or Vendor shall defend the same at Member and/or Vendor's expense, by legal counsel satisfactory to the Cooperative.
- 7.9 Default. Time is of the essence of this Agreement. In the event that Member and/or Vendor should fail to perform this Agreement, then the Cooperative, may, upon written notice to Member and/or Vendor of Member and/or Vendor's default, and the Cooperative shall have all rights and remedies against Member and/or Vendor, at law or in equity. In the event that the Cooperative should fail to perform this Agreement, Member and/or Vendor shall have all rights and remedies against the Cooperative, at law and/or in equity.
- 7.10 Compliance with Laws. The Parties hereto shall comply, or cause prompt compliance with all laws, ordinances, orders, rules and regulations of all municipalities, county, state, federal or other

governmental authorities. Member and Vendor shall not disclose information or material which is proprietary to the Cooperative, whether not owned or developed by the Cooperative, which is not generally known other than by the Cooperative and which Member and/or Vendor obtained through any direct or indirect contact with the Cooperative.

7.11 Amendments. This Agreement may be amended by the Parties, but only in writing and by mutual agreement of the Parties. However, the Cooperative shall have the right to revise the map location number, the serial number of the Vendor's controller and the terms and provisions of Attachment A and Attachment B (Rate Schedule) as needed, without consent or written agreement of the other Parties.

7.12 Authority to Bind. Each person executing this Agreement represents and warrants that he or she has full and legal authority to execute, deliver, and perform for and on behalf of the respective Party for which he or she is executing; *and, further*, has been duly authorized by all necessary action of the respective entity to bind the respective Party.

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IN WITNESS WHEREOF, each of the Parties hereto has caused its duly authorized representative to execute this Agreement.

**MENARD ELECTRIC COOPERATIVE:**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**MEMBER:**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Printed Name

**VENDOR:**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title



**ATTACHMENT A**

Member Name: \_\_\_\_\_ Agreement Effective Date: \_\_\_\_\_

Vendor Name: \_\_\_\_\_

**DEVICES:**

Map Location: \_\_\_\_\_ Controller Vendor & Serial Number: \_\_\_\_\_

Map Location: \_\_\_\_\_ Controller Vendor & Serial Number: \_\_\_\_\_

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## **ATTACHMENT B**

### **IRRIGATION**

**RATE CODE: 50 NON- INTERRUPTIBLE**

**51 INTERRUPTIBLE - MEMBER CONTROL WITH OVERRIDE  
OPTION**

**52 INTERRUPTIBLE – COOPERATIVE CONTROL**

#### **AVAILABILITY:**

Available throughout the Cooperative's service territory subject to the established Rules and Regulations of the Cooperative.

#### **APPLICABILITY:**

Applicable to services for the sole purpose of pumping water for irrigation of land, except that crop drying may be used in conjunction with irrigation service if (1) Connected horsepower for irrigation is forty (40) horsepower or more; (2) Member uses service as provided for the irrigation; that is, same facilities of the Cooperatives as constructed for irrigation; and (3) Member receives permission from the Cooperative to utilize this service for crop drying.

#### **TYPE OF SERVICE:**

Three phase, sixty (60) cycle, at Cooperative's standard voltages.

Single phase, sixty (60) cycle, at available secondary voltages and as allowed by the Cooperative. Member is responsible for converting to three phase.

#### **SPECIAL CONDITIONS:**

Rate 51 – Member must provide Cooperative with access to the Member's web-based Irrigation Load Control application from a Cooperative-approved third-party vendor. The Member is also required to enter into the Irrigation Agreement for Member Enrolling in Rate 51.

Rate 52 – Member must provide motor control equipment that will be compatible for the installation of a Cooperative-owned power-line carrier switch or radio-controlled switch.

#### **CONDITIONS OF SERVICE:**

Service will be provided in three categories: (1) Non-Interruptible, (2) Interruptible with Member Control and Override Option, and (3) Interruptible with Cooperative Control. Time subject to interruption will be determined by the Cooperative.

- (1) Non-Interruptible service will provide the Member with irrigation service not subject to control interruptions within the total horsepower limitations for each substation.
- (2) Interruptible with Member Control and Override Option irrigation service will be as follows: Irrigation service may be interrupted according to the Cooperative's normal policies and procedures, except in emergency situations, which at the discretion of the Cooperative, may occur on any day for up to ten (10) consecutive

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hours. The Cooperative must be granted the ability to perform load control through use of Member's web-based remote-managed Irrigation Load Control application. Member has the option of overriding a Cooperative-issued load control event. Each month the Member overrides a load control event, the Cooperative will charge for the difference between the monthly Rate 50 Demand Charge and the monthly Rate 51 Demand Charge.

- (3) Interruptible with Cooperative Control irrigation service may be interrupted according to Cooperative's normal policies and procedures, except in emergency situations, which at the discretion of the Cooperative, may occur on any day for up to ten (10) consecutive hours. Members do not have the option of overriding a Cooperative-issued load control event. The Cooperative will transition the service to Rate 50 for a period no less than 12 months if a Member is found overriding a Cooperative-issued load control event.

**RATE:**

Rate 50 & Rate 52 - Facility Charge @ \$387.00 per year

Rate 51 – Facility Charge @ \$267.00 per year through 2022, thereafter @ \$387.00 per year

Note: Facility Charge billed over the six (6) billing months of the Irrigation Season, or the balance of the annual Facility Charge in the final month of service, if account is disconnected.

**ENERGY CHARGES:**

All kWh @ 8.0 cents per kWh during Irrigation billing months of May to October (Irrigation Season).

All kWh @ 8.6 cents per kWh during Non-Irrigation billing months of November to April.

**DEMAND CHARGES:**

Rate 50 Non-Interruptible Service - \$75.60 per kW/year, or \$12.60 per kW/ billing month

Rate 51 Interruptible Member Control Service - \$30.60 per kW/year, or \$5.10 per kW/ billing month, plus any monthly override demand costs at \$7.50 per kW/billing demand.

Rate 52 Interruptible Cooperative Control Service - \$30.60 per kW/year, or \$5.10 per kW/ billing month

Note: Demand Charge billed over the six (6) billing months of the Irrigation Season, or the balance of the annual Demand Charge in the final month of service, if account is disconnected.

**DETERMINATION OF BILLING DEMAND:**

The Billing Demand shall be based on the highest fifteen (15) minute kW measurements during the current month and the preceding twelve (12) calendar months. For all billing months, the Billing Demand shall be the greater of either the current actual demand or one hundred percent (100%) of the highest actual demand occurring in the previous twelve (12) calendar months.

**POWER FACTOR ADJUSTMENT:**

The Member agrees to maintain unity Power Factor as nearly as practicable. Demand Charges will be adjusted for Members with twenty-five (25) kilowatts or more of measured demand to correct

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for average power factors lower than ninety percent (90%), and may be so adjusted for other Members if and when the Cooperative deems necessary. Such adjustments shall be made by increasing the measured demand one percent (1%) for each one percent (1%) by which the average power factor is less than ninety percent (90%) lagging.

**UTILITY TAX:**

All charges made under this schedule for electric energy are subject to the prevailing Illinois Electricity Excise Tax.

**BILLING PROCEDURE:**

The kilowatt-hour consumption and any applicable kW demand charges will be billed monthly at the above rate during the Irrigation Season (and each calendar month for those using combination irrigation and crop drying) based on meter readings obtained by the Cooperative. In addition to the energy billing, one-sixth (1/6) of the annual Facility Charge and Demand Charge will be added to the billings of May 31st, June 30th, July 31st, August 31st, September 30th and October 31st.

**POWER COST ADJUSTMENT:**

The Cooperative may apply the Power Cost Adjustment to recover changes in wholesale power cost in accordance with Schedule PCA.

**TERMS OF PAYMENT:**

Electric bills are due and payable when presented. Payment should be made within ten (10) days. If payment is not received within twenty-one (21) days after the date of the original bill, a Past Due Notice will be sent for which one and one-half percent (1½%) on the unpaid balance or a minimum of \$1.00 will be added to the account. If payment is not received by the Cooperative before the due date shown on the Past Due Notice, the Collection Policy for overdue accounts will be in effect.

These rates are subject to the provisions in the Cooperative's Line Extension Policy, Three Phase Service Policy, and Irrigation Load Control Application Qualification Policy.