

## ENLIGHTED, INC.

### END USER LICENSE AGREEMENT

Enlighted, Inc. (“**Enlighted**” or “**Licensor**”) is hereby licensing its proprietary software, including the software defined as Enlighted Products (as defined below) and/or a third party’s software supplied by the Licensor (collectively, the “**Software**”) to the end user thereof (“**Customer**” and together with Enlighted, the “**Parties**”) on the condition that the Customer accepts all of the terms contained in this End User License Agreement (“**Agreement**”).

By clicking the button marked “**I Accept**” below, as well as by using the Enlighted Product that contains the Software, a person becomes a Customer and is deemed to accept this Agreement.

#### A. DEFINITIONS

In this Agreement, unless the context requires otherwise, the following terms, in singular or plural form as appropriate to the context, are defined as follows:

“**Documentation**” means user manuals, training materials, and specifications supplied to Customer by Licensor to assist the Customer’s understanding of the Software and the Enlighted Product(s).

“**Intellectual Property Rights**” means any and all rights in any intellectual property including but not limited to all inventions (patentable or otherwise), software, tools, designs, methodologies, processes, protocols, technology, schematics, know-how, works of authorship, and all other technology, trade secrets, patents, copyrights, trademarks, service marks, logos, trade dress, moral rights and similar rights of any type of any governmental authority, domestic or foreign, now existing or hereafter acquired and including all updates, copies, derivative works and modifications, and applications and registrations related to any of the foregoing.

“**Enlighted Product**” means the lighting or HVAC system(s) purchased by Customer, including software developed by the Licensor that operates and controls lighting and HVAC systems, including as applicable the Enlighted Facility products.

“**Third-Party Source**” means an entity who has supplied the Licensor with part or all of the Software or the Enlighted Product or the Documentation.

#### B. LICENSE FOR USE

1. **Permitted Use.** Subject to the terms of this Agreement, Licensor hereby grants to the Customer, a limited, non-exclusive, non-sub licensable, non-transferable license to use the Software in object code form for its internal purposes on only one Enlighted Product at a time, and to use the Documentation. If Customer has purchased multiple licenses for the Software, then the Customer may have as many copies of the Software in use as the Customer has licenses.

**2. Restrictions on Use.** The Customer shall not:

- (a) copy any part of the Software; provided that the Customer may maintain a reasonable number of copies of the Software for backup purposes;
- (b) fail to preserve, on every copy of the Software and Documentation, the copyright and other proprietary notices of Licensor and its Third-Party Sources;
- (c) make more copies of the Documentation than are reasonably necessary for the use of an Enlighted Product by the Customer, and for training purposes, backup, or replacement of damaged Documentation;
- (d) permit any part of the original Software and Documentation supplied by Licensor, or a copy of either, in whole or in part, to be in the possession of or be accessed by any individual person who is not an employee of the Customer or a contract worker engaged by the Customer;
- (e) use the Software on a service bureau or time sharing basis or to provide services to third parties;
- (f) modify, alter, translate, reverse engineer, decompile, disassemble, or convert into human readable form, all or any part of the Software, or attempt to do the foregoing, or use the Software or Documentation to develop or attempt to develop any derivative works or any functionally compatible or competitive software or device; or
- (g) release the results of any benchmark of the Software to any third party without the prior written consent of Licensor.

**3. Third-Party Software.** The Enlighted Product contains Software from Third-Party Sources, for which the license terms are set out in Appendix I and the restrictions in the immediately preceding Section may not apply. Any Software not listed in Appendix I is subject to all the terms of this Agreement, and shall not be used for any purpose other than as an integral part of the Enlighted Product.

**4. Compliance.** Licensor may, from time to time, request reasonable evidence of compliance by the Customer with the terms of this Agreement. The Customer agrees that Licensor may upon reasonable notice cause an inspection to be made, at Licensor's cost, of the Customer's applicable records and facilities in order to verify compliance with the terms and conditions of this Agreement.

**5. US Government.** If the Customer is a unit or agency of the United States Government, it shall supply Licensor, no later than the date of submitting the executed copy of this Agreement, with a copy (not just a reference number) of any Federal Acquisition Regulations (in this Agreement called "**FARS**", but including without limitation, DFARS, AFARS, NASA FARS, and similar regulations) which may limit or contradict the provisions of this Agreement. Licensor shall then have ten (10) business days after receipt of such FARS to withdraw or terminate this Agreement without liability on either Party. If no such FARS are supplied, this Agreement shall be deemed to be fully in effect in accordance with its terms and to not be modified, limited, or contradicted by any FARS.

## **C. OWNERSHIP OF INTELLECTUAL PROPERTY**

1. **Ownership.** The Customer acknowledges that, despite purchasing an Enlighted Product, the Customer is merely a licensee of the Software, and that this Agreement grants no ownership of any Intellectual Property Rights. Customer agrees to not contest or challenge any claim by either the Licensor or any Third-Party Source, to the ownership of or an interest in the Intellectual Property Rights in the Software and Documentation.

2. **Enhancements.** Without limiting the generality of the preceding Section, the Customer acknowledges and agrees that the Customer shall obtain no ownership of any Intellectual Property Rights developed by Licensor, or by any Third-Party Source, in relation to an Enlighted Product or the Software, even if developed especially for the Customer. Suggestions by the Customer of new features, functionality, or performance that are subsequently incorporated into the Enlighted Product or the Software shall be the property solely of Licensor, or of a Third-Party Source who is an assignee of Licensor. The Customer agrees to take further actions to effect such ownership, including the execution and delivery of instruments of conveyance, upon a reasonable request by Licensor and at Licensor's expense. In the event that the Customer, its employees or contractors have any rights (including any moral rights) associated with enhancements and derivative works, that cannot be assigned to Licensor, the Customer hereby unconditionally and irrevocably waives the enforcement of all such rights and all claims and causes of action of any kind with respect to any of the foregoing against Licensor, its successors or assigns, and agrees to procure a waiver of such rights from any holders of such rights and consents to any action of Licensor, its successors or assigns that would otherwise violate such rights in the absence of such waiver.

3. **Third-Party Software.** The Enlighted Product contains software from third parties who make it available to Enlighted with permission to pass it on to Enlighted's customers provided that such customers are informed of certain facts and of restrictions and limitations as provided in Appendix I to this document. The terms in Appendix I shall govern the rights of the Customer with respect to the software listed there. In the event the Customer obtains a license for software directly from a Third-Party Source, the Customer shall be responsible for adhering to the Third-Party Source's licensing rules and shall indemnify Licensor for any fees charged to Licensor by the Third-Party Source as a result of the Customer's use of the third party's software. The Customer is hereby notified that the Third-Party Source is a third-party beneficiary to this Agreement to the extent that this Agreement contains provisions which relate to the Customer's use of any part of the Software supplied by the Third-Party Source. Such provisions are made expressly for the benefit of the Third-Party Source and are enforceable by the Third-Party Source in addition to Licensor.

## **D. NO WARRANTY**

1. **NO WARRANTY.** CUSTOMER ASSUMES ALL RESPONSIBILITIES FOR SELECTION OF THE SOFTWARE TO ACHIEVE ITS INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE SOFTWARE. CUSTOMER ACKNOWLEDGES THAT ALL SOFTWARE AND DOCUMENTATION PROVIDED BY LICENSOR ARE SUPPLIED "AS IS" AND WITHOUT ANY WARRANTY, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, COMPLETENESS, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT WITH RESPECT TO THE SOFTWARE AND THE ACCOMPANYING WRITTEN MATERIALS.

**2. EXCLUSION OF LIABILITY.** CUSTOMER ASSUMES THE ENTIRE COST OF ANY DAMAGE RESULTING FROM CUSTOMER'S USE OF THE SOFTWARE. SUBJECT TO APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL LICENSOR OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES FROM THE CUSTOMER'S USE OF THE SOFTWARE OR DOCUMENTATION WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES RESULTING FROM DELAY OF DELIVERY OR FROM LOSS OF PROFITS, DATA, BUSINESS OR GOODWILL, ON ANY THEORY OF LIABILITY, WHETHER ARISING UNDER TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, WHETHER OR NOT LICENSOR HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES). THIS LIMITATION WILL APPLY REGARDLESS OF THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## **E. MICELLANEOUS**

**1. Governing Law.** This Agreement shall be exclusively governed by, and construed in accordance with, the laws of the State of California, United States, without regard to rules and principles about the conflict of laws. The parties expressly exclude the effect of the United Nations Convention on Contracts for the International Sale of Goods. Exclusive jurisdiction and venue for any litigation arising from this Agreement will lie in state or federal courts of California, and each party agrees to not bring legal action in any other court.

**2. Entire Agreement.** This Agreement is the entire agreement between Customer and Enlighted and supersedes any other communications with respect to the Software and Documentation. If any provision of this Agreement is held to be invalid, the remainder of this Agreement will continue in full force and effect.