

Light is OSRAM



ENCELIUM[®] EXTEND Systems

End User License Agreement

This End User License Agreement (“Agreement”) between you, as an individual or entity (“End User”), and OSRAM SYLVANIA Inc., a Delaware corporation with a principal place of business at 200 Ballardvale Street, Wilmington, Massachusetts 01887, governs the use of any software program provided for use with the ENCELIUM[®] EXTEND Networked Light Management System (LMS).

BY CLICKING ON “ACCEPT”, OR USING THE SYSTEM, YOU CONFIRM THAT YOU HAVE READ THE AGREEMENT AND ACCEPT ALL OF ITS TERMS. IF YOU DO NOT ACCEPT THE TERMS YOU HAVE NO RIGHT TO USE THE SOFTWARE AND MUST RETURN THE SOFTWARE AND OSRAM HARDWARE IMMEDIATELY.

1. Definitions.

- a. “End User Data.” Any information, data, or text entered into or generated by the System specific to the End User or End User Site.
- b. “End User Site.” The location and, where applicable, specific areas within the building where the System is installed and operated.
- b. “Documentation.” Instructions, manuals, diagrams and collateral materials pertaining to use and operation of the OSRAM Hardware and Software
- c. “Open Source Software.” Software distributed in source code form, subject to a license agreement that conforms to the Open Source Initiative’s Open Source Definition (<http://www.opensource.org>). License agreements, source code, and copyright disclosures for Open Source Software used in the System can be found at <http://www.encelium.com/licensing>.
- d. “OSRAM Hardware.” ENCELIUM[®] EXTEND Networked Light Management System hardware and components produced or supplied by OSRAM SYLVANIA, OSRAM GmbH or its affiliated brands.
- e. “OSRAM Software.” Any version of Polaris3D[®], other software or firmware, including components, extensions and modules, related updates and upgrades; licensed materials, and Documentation, whether incorporated into, distributed, or for use with the System.
- f. “System.” ENCELIUM[®] EXTEND Networked Light Management System consisting of OSRAM Hardware and Software.
- g. “System Start-up.” Verification that System installation is complete and System is operating substantially as designed.
- h. “Third Party Software.” Software and software components provided by third parties (“Third Party Licensors”) incorporated or for use with the OSRAM Software and System, including certain Open Source Software components and third party operating systems.

2. Limited License.

- a. Subject to the terms of this Agreement, OSRAM SYLVANIA grants End User a nonexclusive, nontransferable, non-assignable license to install and use the executable form of the OSRAM Software on the OSRAM Hardware for End User’s internal business use at the End User Site.
- b. End User may only use the number of copies of the OSRAM Software as specified on the contract or invoice for which the applicable license fees were paid. Except for any firmware, End User may make a copy of OSRAM Software for backup purposes in machine readable form, marked with every notice on the original.
- c. No rights are granted to the source code versions of the OSRAM Software other than as provided in any applicable Open Source Software license.
- d. OSRAM SYLVANIA and its licensors own the OSRAM Software and all associated intellectual property rights, and reserve all rights not expressly granted in this Agreement. The OSRAM Software is licensed and not sold.
- e. Third Party Licensors may have enforceable rights in the OSRAM Software that may be asserted directly against End User.

3. Prohibited Actions.

End User shall not, and shall not allow any third party to:

- a. Use or examine the OSRAM Software or Hardware except as permitted in this Agreement;
- b. Reverse engineer, decompile, translate, disassemble, or otherwise attempt to discover the source code of the OSRAM Software, or create any derivative works of the OSRAM Software or Documentation;
- c. Circumvent, or attempt to circumvent, any copy protection, rights management, or security measures provided with the OSRAM Software or Hardware;
- d. Delete or modify any names, logos, copyright notices, trademarks, tags, or other proprietary markings; or
- e. Use the OSRAM Software or System to develop competitive products or services. End User may not disclose the results of any benchmarking of the OSRAM Software to third parties, or use the results for any software development activities without OSRAM SYLVANIA’s consent.

4. Limited Warranty.

- a. OSRAM SYLVANIA warrants to the original purchaser of the license that the OSRAM Software, excluding Open Source Software and third party operating systems, will perform substantially in accordance with the published specifications for a one year period following System Start-up. Warranty claims must be made within the one year period. OSRAM SYLVANIA will use reasonable efforts to modify or fix any material defect in the operation of the OSRAM Software a timely manner.
- b. This warranty excludes coverage for damage, malfunction or inoperability caused by: (1) use in violation of published specifications; (2) abnormal use or stress caused by power surges, fire, lightning, earthquakes, flooding, water damage or other natural conditions; (3) malicious code or security breaches through End User's network; or (4) unauthorized modifications.

5. Limitation of Liability.

EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS, OSRAM SYLVANIA SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES RESULTING FROM USE OF THE OSRAM SOFTWARE. OSRAM SYLVANIA'S MAXIMUM AGGREGATE LIABILITY FOR DAMAGES ARISING UNDER THIS AGREEMENT LIMITED TO THE GREATER OF \$500,000.00 OR THE TOTAL FEES PAID TO OSRAM SYLVANIA FOR THE PURCHASE, INSTALLATION AND SERVICE OF THE SYSTEM. CLAIMS ARISING OUT OF OSRAM SYLVANIA'S NEGLIGENCE, CLAIMS ALLEGING PERSONAL INJURY OR DEATH, OR CLAIMS ELIGIBLE FOR INDEMNIFICATION ARE EXCLUDED FROM THE LIABILITY LIMITATION. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

6. Indemnity.

- a. OSRAM SYLVANIA will defend or settle any third party claim against End User alleging that the OSRAM Software when used with the OSRAM Hardware infringes any registered intellectual property right in the U.S. or Canada as of the date of shipment. OSRAM SYLVANIA's indemnification obligation is conditioned on End User's:
 1. prompt written notice of the claim to OSRAM SYLVANIA;
 2. cooperating with OSRAM SYLVANIA in the defense of the claim; and
 3. granting OSRAM SYLVANIA sole control of the defense and settlement of the claim. OSRAM SYLVANIA will pay infringement claim defense costs, negotiated settlement amounts, and court-awarded damages. OSRAM SYLVANIA will not settle any claim against End User without consent, unless the settlement completely releases End User from liability.
- b. Remedies. If such a claim appears likely, OSRAM SYLVANIA may modify the OSRAM Software or OSRAM Hardware, procure any necessary license, or replace the affected OSRAM Software or OSRAM Hardware with one that is functionally equivalent. If OSRAM SYLVANIA determines that none of these alternatives is reasonably available, then OSRAM SYLVANIA will issue End User a refund equal to a pro-rata portion of the charges paid by End User for the infringing OSRAM Software or Hardware upon return of the items to OSRAM SYLVANIA.
- c. Exclusions. OSRAM SYLVANIA has no obligation for any claim of infringement arising from: (1) OSRAM SYLVANIA's compliance with End User's designs, specifications, or instructions; (2) Modifications made by End User or a third party; (3) End User's non-compliance with the Agreement; (4) Open Source Software; or (5) Third Party Software, if such Third Party Software is the sole basis of the infringement claim.
- d. This section states OSRAM SYLVANIA's entire liability for third party claims of intellectual property infringement.

7. Term and Termination.

- a. This Agreement is effective from the date of System Start-up until terminated. OSRAM SYLVANIA may terminate this Agreement if End User: breaches any material term of this Agreement or Third Party Software license or ceases to do business in the normal course, becomes insolvent, or becomes subject to any bankruptcy, insolvency, or equivalent proceedings. End User may terminate this Agreement by returning the Software, Documentation and OSRAM Hardware to OSRAM SYLVANIA.
- b. Upon termination, End User must immediately return any copies of the Software and Documentation to OSRAM SYLVANIA, or provide satisfactory evidence of their destruction. Payments are non-refundable, and termination will not relieve any payment obligations.
- c. The OSRAM Software and Documentation include valuable intellectual property, and are proprietary to OSRAM SYLVANIA. If End User breaches or threatens to breach this Agreement monetary damages would be inadequate to protect OSRAM SYLVANIA's interests in the Software and Documentation. OSRAM SYLVANIA will have the right, in addition other remedies, to seek equitable relief enjoining any actual or threatened violation of this Agreement.
- d. The obligations and restrictions of Sections 2(d), 3(c), 4, 5(b), 6, 8(c), 8(d), 9, 12, 13 and 14 shall survive termination.

8. Confidentiality.

The parties recognize that in the course of providing the OSRAM Software and performing services pursuant to this Agreement, both parties may have access to confidential information and trade secrets belonging to the other that each desires to keep confidential ("Confidential Information"). Each party agrees that all Confidential Information disclosed to the other party for purposes of this Agreement will be used by the recipient only to fulfill their obligations or as otherwise expressly permitted under this Agreement. Confidential Information may not be disclosed by the recipient party, other than to its employees and representatives who are subject to a duty of confidentiality, without the prior written consent of the disclosing party. Each party will be responsible for any unauthorized use or disclosure of Confidential Information by anyone to whom the party disclosed the information. Upon any actual or threatened violation of this Section by either party, money damages would be inadequate to protect the disclosing party. The disclosing party will have the right, in addition to other available remedies, to seek equitable relief enjoining the actual or threatened violation of this Section.

9. End User Data.

- a. OSRAM SYLVANIA, its affiliates and authorized representatives may collect and use End User Data solely to provide support or services to End User and to improve the OSRAM Software. OSRAM SYLVANIA uses commercially reasonable procedures to protect End User Data.
- b. The System and OSRAM Software are not designed or intended for the use, processing, transmission or storage of personally identifiable information or protected health information. End User is solely responsible for ensuring the security of their network and compliance with applicable laws concerning the use, processing or storage of End User Data through End User's network. OSRAM SYLVANIA is not a business associate or data processor with respect to any End User Data.
- c. End User has sole responsibility to properly back up all software and data on the System and to maintain appropriate information and data security practices.

10. Government Restricted Rights.

The OSRAM Hardware and Software were developed at private expense and are Commercial Items, as defined in 48 CFR 2.101, consisting of Commercial Computer Software and Commercial Computer Components. OSRAM Hardware and Software are licensed to U.S. Government and other government end users only as Commercial Items and with only those rights granted to all other end users pursuant to OSRAM SYLVANIA's standard license terms and conditions.

11. Export Restriction.

OSRAM Hardware, Software and all related technical information or materials are subject to U.S. export control jurisdiction and the export controls, trade restrictions, embargoes and sanctions established by the United States and other countries ("Export Laws"). End User agrees to comply with all applicable Export Laws and ensure that the OSRAM Hardware and Software: (i) are not exported directly or indirectly to any prohibited person or country or otherwise in violation of Export Laws; or (ii) are not used for any purpose prohibited by Export Laws.

12. Transfer.

End User may make a one-time permanent transfer of its rights to the System to another party at the End User Site (e.g. a corporate affiliate, successor-in-interest, landlord or tenant) provided that:

- a. End User is current on its payment obligations;
- b. End User notifies OSRAM SYLVANIA about the transfer;
- c. End User does not retain any copies of the OSRAM Software or Documentation, including back-up copies; and
- d. the transferee accepts the terms of this Agreement through written notice of acceptance to OSRAM SYLVANIA. Otherwise End User may not assign, sublicense or transfer the OSRAM Hardware or Software, or any rights or obligations under this Agreement without OSRAM SYLVANIA's prior written consent.

13. Miscellaneous.

- a. Complete Agreement. This Agreement, and the Terms of Sale, Limited Warranty, and Service Agreement (if applicable) each incorporated by reference, contain the entire understanding of the parties with respect to the use of the OSRAM Hardware and Software by End User. OSRAM SYLVANIA rejects additional or inconsistent terms contained in any purchase order. This Agreement may only be modified in writing by an authorized representative of OSRAM SYLVANIA.
- b. Non-Waiver. The delay or failure of either party to exercise any right or claim will not waive any future exercise of the right or claim. If any provision is held or made invalid by law, all other provisions shall remain in force.
- c. Notice. Any notice or report under this Agreement shall be in writing and sent by email, fax with confirmation of receipt, hand or messenger delivery, or by express or overnight delivery service, to the other party. Notices to End User will be sent to the address set forth in the applicable price quotation or as registered with OSRAM SYLVANIA. Notice to OSRAM SYLVANIA should be sent to OSRAM SYLVANIA Inc., Attn: Law Department (LLS), 200 Ballardvale Street, Wilmington, Massachusetts 01887. Either party may change the notice address by written notice to the other.
- d. Choice of Law. If the End User Site is in the United States, this Agreement is governed by the laws of the Commonwealth of Massachusetts, without reference to conflict of laws principles. If the End User Site is in Canada, this Agreement is governed by the laws of Canada. The application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are expressly excluded.

Americas Headquarters

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Specifications subject to change without notice.

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