



# End User License Agreement

75F, LLC and its affiliates and subsidiaries (collectively, “75F”) provides a cloud-based building automation system that makes light commercial buildings more comfortable and energy efficient.

You agree to the terms and conditions of this 75F End User License Agreement (“EULA”) by using the 75F hardware products (“75F Hardware”) and the software installed on the Hardware (“Software”). The Software and your use thereof are governed by, and subject to, this EULA. This EULA is intended to make you aware of the terms and conditions that govern your use of the Software. In the event you purport to be the agent of, represent, or otherwise act on behalf of an entity or any other person, references to “you” and “your” includes such entity or person in addition to you, and your acceptance of this EULA constitutes acceptance on behalf of such entity or person.

Your use of the 75F user portal accessible through [<http://facilisight.75f.io/>] (“Facilisight”), the services accessible through Facilisight (the “App”), and the subscription services accessed through the App (the “Subscription Services”), all of which are used with the Software and 75F Hardware, are governed by the 75F Terms of Service, which is located at [[www.75F.com/legal](http://www.75F.com/legal)]. This EULA does not govern your use of Facilisight, the App, or the Subscription Services. Your purchase and use of the 75F Hardware will be governed by the 75F End User Product Terms and Conditions and the 75F Limited Warranty Policy, each located at [[www.75F.com/legal](http://www.75F.com/legal)].

Please read this EULA carefully before accessing or using the Software. You must read, agree with, and accept all of the terms and conditions contained in this EULA, which includes those terms and conditions expressly set out below and those incorporated by reference, before you access or use the Software. By using the Software, you agree to be bound by the terms and conditions of this EULA. The disclaimers, terms, and conditions in this EULA are of general application and may be supplemented by additional policies, procedures, disclaimers, guidelines, rules, terms, and conditions of specific application disclosed by 75F. In the event of a conflict between this EULA and any additional policies, procedures, disclaimers, guidelines, rules, terms, or conditions of specific application, the additional policies, procedures, disclaimers, guidelines, rules, terms, or conditions of specific application will control.

YOU MAY NOT USE THE SOFTWARE IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS EULA.

A copy of this EULA can be received by emailing your request to [[support@75f.io](mailto:support@75f.io)] or by visiting [[www.75F.com/legal](http://www.75F.com/legal)].

## 1. LICENSE

**(a) Grant of License.** 75F hereby grants to you a limited, nonexclusive, nonassignable, nontransferable license to access and use the Software solely on the 75F Hardware that you purchased or control. Your use of the Software is subject to your agreement to, compliance with, and satisfaction of, this EULA. 75F reserves all rights not otherwise expressly granted by this EULA. If you do not comply with this EULA, 75F reserves the right to revoke any license granted in this EULA.

**(b) Restrictions.** You may not: (1) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party any portion of the Software in any way; (2) copy, modify, adapt, alter, translate, create derivative works, reverse engineer, decompile, disassemble, or otherwise attempt to learn the source code, structure, or ideas upon which the Software is based; (3) use the Software to develop a competing service or product; (4) use or merge the Software or any component thereof with other hardware, software, databases, or services not provided or approved, in writing, by 75F; (5) circumvent, or attempt to circumvent, any electronic protection measures in place to regulate or control access to the Software; (6) use any material or information made available through the Software in any manner that misappropriates any trade secret or infringes any copyright, trademark, patent, rights of publicity, or other proprietary right of any party; or (7) delete, modify, hack, or attempt to change or alter the Software or notices on the Software. 75F reserves the right to investigate and prosecute violations of any of the above to the fullest extent of the law. 75F may involve and cooperate with law enforcement in prosecuting users who violate these terms.

## 2. SOFTWARE UPDATES

75F may develop updates, upgrades, patches, and other software modifications for the Software (“Software Update”). Software Updates can be installed without prior notice and without your consent. By using the 75F Hardware and Software, you hereby consent to Software Updates. Your only remedy is to stop using the 75F Hardware and Software if you do not consent to

Software Updates being installed automatically. From time to time you may be prompted to install a Software Update and you agree to promptly install such Software Update.

### 3. SOFTWARE LIMITATIONS

**(a) No Emergency Services.** You understand and acknowledge that neither the Software nor 75F Hardware can notify emergency services in the event of an emergency. Neither the Software nor 75F Hardware are designed to contact fire protection, emergency medical service, or any other public safety or health service. YOU UNDERSTAND AND ACKNOWLEDGE THAT YOU SHOULD NOT RELY ON 75F, THE SOFTWARE, OR 75F HARDWARE FOR EMERGENCY RESPONSE MANAGEMENT OR TO OTHERWISE INCREASE OR IMPROVE SAFETY AT YOUR PLACE OF BUSINESS. CALL 911 IN THE EVENT OF AN EMERGENCY.

**(b) Notifications.** You may configure the Software to provide you notifications, however, you understand and acknowledge that the notifications are not intended to be 100% reliable or available. 75F does not represent, warrant, or guarantee that you will receive notifications in a timely manner, if at all. YOU UNDERSTAND AND ACKNOWLEDGE THAT YOU SHOULD NOT RELY ON THE SOFTWARE FOR NOTIFICATIONS TO INFORM YOU OF AN EMERGENCY OR ANY OTHER CRITICAL SITUATION.

**(c) Energy Efficiency and Cost Savings.** 75F does not guarantee you will see a certain level of energy efficiency or cost savings by using the Software or 75F Hardware. The actual amount of energy efficiency and cost savings are subject to factors outside of 75F's control. 75F may provide to you information regarding your energy usage and how you may increase your cost savings, however, you acknowledge that this information may not result in increased energy efficiency or cost savings and that 75F will have no liability to you for damages or loss or any other remedy in the event you do not experience increased energy efficiency or cost savings.

### 4. OWNERSHIP AND INTELLECTUAL PROPERTY

Unless otherwise specifically noted in this EULA, images, trademarks, service marks, logos and icons displayed on the Software are the property of 75F and its licensors and may not be used without 75F's prior written consent. Trademarks owned by third parties are the property of those respective third parties. The Software is 75F's copyrighted property and it may not be reproduced, recreated, modified, accessed, or used in any manner or disseminated or distributed to any other party in violation of this EULA. There are no implied licenses in this EULA and 75F reserves all rights in and to the Software that are not expressly granted to you in this EULA. The Software is licensed, not sold, to you. Any feedback and ideas you provide to 75F regarding the Software will become 75F's property and 75F may use, copy, distribute, publish, and modify your feedback and ideas without compensation to you. By submitting your feedback to 75F, you agree to assign, and hereby irrevocably assign to 75F, all right, title, and interest in and to the Feedback and all copyrights and other intellectual property rights embodied in such feedback on a worldwide basis. Moreover, you hereby assign or waive, as the case may be, any moral rights that you may have in or to the Feedback.

### 5. DISCLAIMERS

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SOFTWARE IS PROVIDED "AS IS" AND "AS AVAILABLE," AND AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY LAW, 75F EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, TITLE, AND NON-INFRINGEMENT. WITHOUT LIMITATION, 75F MAKES NO WARRANTY THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT USE OF THE FOREGOING WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE, OR VIRUS-FREE, THAT THE RESULTS OBTAINED FROM THE USE OF THE FOREGOING OR ANY INFORMATION FOUND ON THE SOFTWARE WILL BE ACCURATE OR RELIABLE, OR THAT THE QUALITY OF ANY INFORMATION OR OTHER MATERIALS OBTAINED THROUGH THE SOFTWARE WILL MEET YOUR EXPECTATIONS.

### 6. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND IN ADDITION TO THE WARRANTY DISCLAIMERS ABOVE, IN NO EVENT WILL (A) 75F BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF TIME, GOODWILL, INCONVENIENCES, DATA, COMMERCIAL LOSS OR ANY OTHER INTANGIBLE LOSS, ARISING FROM, RELATING TO, IN CONNECTION WITH, OR AS A RESULT OF, THE SOFTWARE AND THE USE THEREOF, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGES IN ADVANCE AND (B) 75F'S ENTIRE AGGREGATE LIABILITY, AND YOUR SOLE AND EXCLUSIVE REMEDY, FOR ANY CLAIM OR CAUSE OF ACTION ARISING HEREUNDER (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT,

NEGLIGENCE, STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGES IN ADVANCE) WILL NOT EXCEED THE FEES ACTUALLY PAID BY YOU (IF ANY) TO 75F OR 75F'S AUTHORIZED RESELLER OR DISTRIBUTOR FOR THE 75F HARDWARE AT ISSUE DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

## 7. INDEMNIFICATION

You agree to defend, indemnify, and hold harmless 75F, its officers, members, managers, employees, and agents from and against any and all claims, liabilities, damages, losses, demands, or expenses, including attorney's fees and costs and expenses, arising out of or in any way connected with (a) your use of the Software; (b) your violation of this EULA; (c) your violation of any law or the rights of any third party; and (d) your negligence or willful misconduct.

## 8. TERM AND TERMINATION

This Agreement is effective upon your first use of the Software or 75F Hardware and will continue in full force for as long as you own or use the 75F Hardware or until terminated. You agree that 75F may immediately terminate this EULA at any time in the event it believes you have violated this EULA. You may terminate this EULA at any time by immediately discontinuing all access to the Software. Upon termination of this EULA, you must terminate all use of the Software and any information or materials provided thereby. Termination or cancellation of this EULA will not affect any right or relief to which 75F may be entitled at law or in equity. In the event of termination, you will not be entitled to any refund of any fees or other charges, if any, paid in connection with the 75F Hardware.

## 9. CONFIDENTIAL INFORMATION

During the term of this EULA, and continuing after the termination of this EULA (**the "Restricted Period"**), you will protect and keep confidential the Software, all information that 75F classifies as confidential, and any other 75F information which otherwise should reasonably be considered proprietary, confidential, or commercially sensitive under the circumstances such information is disclosed (**"Confidential Information"**). You will protect the Confidential Information from unauthorized disclosure by taking at least those steps that 75F uses to protect the Confidential Information, but in no event less than reasonable efforts. You will not, except as authorized by 75F, use, disseminate, divulge or disclose any such Confidential Information during the Restricted Period for any purpose whatsoever not specifically authorized pursuant to this EULA, including any Software source code you receive must be held in confidence in perpetuity. These confidentiality obligations will not apply to any information which you can show, in writing, (a) was previously known to you without restriction; (b) is or becomes publicly available through no fault of your own; (c) is disclosed to you by a third party having no obligation of confidentiality to 75F; or (d) you independently developed without reference to the Confidential Information. You will immediately notify 75F in writing if you discover any unauthorized use or disclosure of Confidential Information. You may disclose Confidential Information as required by law or in compliance with any court or administrative order; provided that, you must give 75F reasonable notice as permitted by law that such Confidential Information is being sought by a third party in order to afford 75F the opportunity to limit or prevent such disclosure.

## 10. MISCELLANEOUS

**(a) Changes to this EULA.** 75F reserves the right, at its discretion, to change, modify, add, or remove portions of this EULA at any time by posting such changes to this page. 75F will endeavor to notify you of such changes via the email address you provided during your account registration. You understand that you have the affirmative obligation to check this EULA periodically for changes and you hereby agree to periodically review this EULA for such changes. Your continued use of the Software following the posting of changes to this EULA will constitute your acceptance of those changes.

**(b) Governing Law and Venue.** This EULA will be governed by and construed, interpreted, and enforced in accordance with the laws of the State of Minnesota, without reference to its conflicts or choice of law principles. You agree that the sole and exclusive jurisdiction and venue for any and all lawsuits, claims, proceedings, disputes or disagreements arising out of or related in any way to this EULA will be in any state or federal court located in or having jurisdiction over Dakota County, Minnesota. You irrevocably submit and consent to the personal jurisdiction and venue of such courts.

**(c) Consent To Do Business Electronically.** 75F uses and relies upon electronic records and electronic signatures for the execution and delivery of this EULA and any other agreements, undertakings, notices, disclosures or other documents, communications or information of any type sent or received in accordance with this EULA and in performing its obligations and exercising its rights

under this EULA. Neither you nor 75F will prevent or inhibit in any way the other party from printing, saving, or otherwise storing electronic records sent or otherwise made available to the other party. You agree not to contest the authorization for, or validity or enforceability of, electronic records and electronic signatures, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files, or electronic records are to be in writing or signed by you to be bound thereby. You will bear your own costs and expenses in conducting business electronically, and will undertake all steps necessary, including software, hardware and other equipment upgrades and purchases, in order to be able to conduct business electronically.

**(d) Injunctive Relief.** You agree that breach of the provisions of this EULA would cause irreparable harm and significant injury to 75F which would be both difficult to ascertain and which would not be compensable by damages alone. As such, you agree that 75F has the right to enforce the provisions of this EULA by injunction (without necessity of posting bond), specific performance, or other equitable relief without prejudice to any other rights and remedies 75F may have for your breach of this EULA. All remedies available to 75F will be cumulative and the pursuit of one remedy will not be deemed to exclude any other remedy.

**(e) Entire Agreement.** This EULA constitutes the entire agreement between you and 75F with respect to the subject matter hereof and supersedes all prior agreements, both oral and written, with respect to the subject matter hereof.

**(f) Waiver.** 75F's failure to enforce the provisions of this EULA will not be deemed to be a waiver of its right to enforce them.

**(g) Severability.** If any term or provision of this EULA will be held to be invalid, illegal, or unenforceable, the remaining terms and provisions of this EULA will remain in full force and effect, and such invalid, illegal, or unenforceable term or provision will be deemed not to be part of this EULA.

**(h) Survival.** The provisions of this EULA that by their content are intended to survive the expiration or termination of this EULA, including, without limitation, provisions governing ownership and use of intellectual property, representations, disclaimers, warranties, liability, indemnification, governing law, jurisdiction, venue, remedies, rights after termination, and interpretation of this EULA, will survive the expiration or termination of this EULA for their full statutory period.

**(i) Assignment.** You may not assign, transfer, or sell (voluntarily or by operation of law) your rights or obligations under this EULA, nor delegate your duties hereunder to any other person, without 75F's prior written consent. Any purported assignment without 75F's consent will be void and will constitute a breach of this EULA. 75F may assign this EULA or delegate or subcontract its obligations under this EULA at any time.

**(j) Notifications.** You can contact us through your 75F account or by email. Unless you tell 75F otherwise, or the law requires otherwise, you agree to receive all communications from 75F by email or through posting notices to your account. You may print the communications for your records. You agree that all communications that 75F sends to you electronically satisfy any legal requirement that a communication be in writing. You may choose to get legal notices in paper form through the mail if you tell 75F you do not want legal notices sent electronically. If you choose to paper form, legal notices will be sent to you in paper form by postal mail or as otherwise permitted or required by law. All other communications not required by law to be in paper form will be sent electronically. To tell 75F that you do not want legal notices sent electronically send the notice in writing and by certified and registered mail to 221 River Ridge Circle South, Burnsville, MN 55337.

**(k) Compliance with Non-US Law.** 75F makes no representation that the Software or other material or information provided through the Software is appropriate to or available in locations outside of the United States. You may not use the Software or export material or information provided through the Software in violation of United States export laws, regulations, or restrictions. If you access the Software from outside of the United States, you are responsible for compliance with all applicable laws.