

Silvair Commissioning Terms of Use

PLEASE READ THESE TERMS OF USE (THE "**TERMS OF USE**") BEFORE USING SILVAIR COMMISSIONING TOOL ("**SILVAIR COMMISSIONING**"). THE TERMS OF USE GOVERN YOUR ACCESS TO AND USE OF THE SILVAIR COMMISSIONING AVAILABLE FOR YOUR USE ONLY ON THE CONDITION THAT YOU AGREE TO THE TERMS OF USE SET FORTH BELOW.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF USE, **DO NOT** ACCESS OR USE THE SILVAIR COMMISSIONING. IF YOU HAVE ALREADY DOWNLOADED OR INSTALLED THE SILVAIR COMMISSIONING AND YOU DO NOT AGREE TO THE TERMS OF USE, THEN DELETE THE SILVAIR COMMISSIONING IMMEDIATELY.

1. User Eligibility

Silvair Commissioning is offered to you and the entity you are authorized to represent ("**You**") by Silvair, Inc., and is provided and operated by Silvair sp. z o.o. with its registered office in Krakow, Poland, at Jasnogórska 44, company registration number KRS: 0000395561 ("**Silvair**"), email: support@silvair.com. By clicking the "I Accept" button or checkbox presented with these Terms of Use, or by downloading, installing, accessing or using any portion of the Silvair Commissioning, you signify your agreement to be bound by these Terms of Use.

The Silvair Commissioning applies only to entities and persons over the age of legal majority who can form legally binding agreement(s) under applicable law. If you do not qualify, you are not permitted to use the Silvair Commissioning.

2. Scope of Terms of Use

These Terms of Use govern your access and use of the Silvair Commissioning and are legal and binding agreements between You and Silvair.

You acknowledge full responsibility for the legal and responsible access to and use of the Silvair Commissioning.

The Silvair Commissioning means collectively: the combined web, the mobile app and all associated cloud computing.

You are entitled to use the Silvair Commissioning solely: (a) for the purpose of configuration and managing the compatible devices, i.e. devices containing version of Silvair's firmware which is operable by the Silvair Commissioning or other compatible devices recommended by Silvair (collectively "**Device**") and (b) which have been installed in the lighting system based on Bluetooth Mesh standard ("**Lighting System**").

The Silvair Commissioning provides the features, functionalities defined in the Silvair Commissioning documents, including technical requirements, users manuals and instructions (collectively "**Documentation**") available at www.silvair.com/support/. Please read this Documentation before using the Silvair Commissioning. The Documentation may be amended by Silvair from time to time without notice. You are advised to regularly review the Documentation.

Please note that some of the functionalities or access to the Silvair Commissioning may be restricted due to external requirements or provision of law applicable in some territories. Therefore Silvair does not guarantee that the Silvair Commissioning will be available for usage in all locations.

These Terms of Use may be revised and updated at any time and due to Silvair's sole discretion, in particular due to the improving of the quality of the services provided, changing of the business strategy, adapting to mandatory law regulations. By downloading, installing, accessing or continuing using any portion of the Silvair Commissioning, you will be deemed to have accepted such amendments. You are advised to regularly review these Terms of Use.

3. Access to and use of the Commissioning Tool. Account

Using the Silvair Commissioning is permissible provided that Your device/mobile device meets jointly the following minimum technical requirements:

For the web application: (a) has access to the Internet, (b) allows the start-up of from the most recent version of internet browsers Google Chrome.

For the mobile application: (a) has access to the Internet, (b) has the most recent version of the iOS or Android system.

If you access or use the Silvair Commissioning on a wireless device, note that your wireless or cellular provider may charge fees or data usage for the Silvair Commissioning, all of which are at your cost.

These Terms of Use are between You and Silvair and we are responsible for maintaining Silvair Commissioning, not any third party distribution channel (i.e. Apple, Google Ireland, or its affiliates (collectively as "Distributors")). You and Silvair acknowledge and agree that Distributors and its subsidiaries are third party beneficiaries to this agreement and, upon your acceptance of these Distributors' Terms of Use will have the right (and will be deemed to have accepted the right) to enforce this agreement as a third party beneficiary thereof. Additionally Distributors' shall not have any liability under this Agreement. Please read Distributors' terms of use before you start using the Silvair Commissioning.

Certain components of the Silvair Commissioning may be subject to open source license terms. They are identified, together with their respective copyright notices and applicable license text, in a separate open source readme file which can be downloaded from www.silvair.com/support. Silvair will not have any liability or responsibility to you or any other person for using such open source software. Please read these third party open source license terms before you start using the Silvair Commissioning.

Using the Silvair Commissioning and associated features, requires registration and creation of Your personal user account ("**Account**").

You may be asked to provide certain information (e.g. name, email address, country, company name, phone number). This information is requested and maintained by Silvair pursuant to the Silvair Commissioning Privacy Notice, available at www.silvair.com/support. Under the Silvair Commissioning Privacy Notice, You agree to provide Silvair with information that is accurate and that belongs to You. You also agree to update Silvair promptly if and when any of the Account information changes.

You shall be asked to create login credentials when setting up your Account. Keep your login credentials secure and private and do not share your information with anyone. You are responsible for ensuring that this information remains confidential, and any conduct, action, inaction or negligence – made in your Account or by you or your device in the Silvair Commissioning are your responsibility, whether authorized or unauthorized. You are also responsible for restricting access to your computer(s) or mobile device(s) on which you use or access the Silvair Commissioning. You should immediately notify Silvair of any unauthorized access to your accounts.

Silvair reserves the right to require our prior or later acceptance for registration. We have a right to refuse the registration, in particular if you have previously violated the Terms of Use. We may at any time and at our own discretion, suspend and/or block access to the Silvair Commissioning for security or other justified

reasons.

The Silvair Commissioning currently supports specific user roles in the projects created in the Silvair Commissioning e.g. a project owner, a manager, an installer, and an end-user, as described in the Documentation. Please be aware that particular rights and obligations concerning the performance of the Silvair Commissioning belong to the specific user-roles and its Account. Therefore you are advised to read the Documentation carefully. Silvair reserves the right to refuse to: regain access to the Account (in case of deletion of the Account), or transfer access to the Account to any third party. Therefore, if You use the Silvair Commissioning as a "project owner", You and a tenant or the owner of the property where the Lighting System is operating, shall be responsible to secure access to the project created by using the Silvair Commissioning.

You are entitled to delete the Account at any time by using the "Delete the account" function in the My Account section of the Silvair Commissioning. By deleting the Account, you terminate this Agreement and you may not be able to restore access to your Account.

4. License and Ownership

The Silvair Commissioning is licensed, not sold. With the exception of intellectual property used in the Silvair Commissioning that is owned by the Bluetooth SIG, Inc., or by the third party, any and all intellectual property rights and its content (collectively "**Intellectual Property**") associated with the Silvair Commissioning are protected by copyright and other laws, and will remain Silvair sole property. Elements of the Silvair Commissioning are also protected by trademark, trade secret, unfair competition, and other laws and may not be copied or imitated in whole or in part.

All custom graphics, icons, and other items that appear in the Silvair Commissioning are trademarks, service marks or trademark ("**Marks**") of Silvair, its affiliates or other entities that have granted Silvair the right and license to use such Marks and may not be used or interfered with in any manner without the express written consent of Silvair.

Except as otherwise expressly authorized by these Terms of Use, you may not copy, reproduce, modify, lease, loan, sell, create derivative works from, upload, transmit, or distribute the Intellectual Property of the Silvair Commissioning and its Content in any way without the Silvair's or the appropriate third party's prior written permission. Except as expressly provided herein, Silvair does not grant to you any express or implied rights to the Silvair's or any third party's Intellectual Property.

Subject to your compliance with these Terms of Use and without prejudice to any other terms set forth in these Terms of Use, Silvair, grants You a limited, personal, non-exclusive, revocable right (a) to access and use the Silvair Commissioning (including Documentation) only in the manner presented and expressly permitted by Silvair, and (b) to transfer this license to the third party (e.g. legal owner or tenant of the building where the Lighting System has been commissioned by the Silvair Commissioning). In the scope of the license, You are also entitled to create user-roles accounts and give the access to them to Your associates. The license to use the Silvair Commissioning granted under these Terms of Use remains in effect until terminated by You or Silvair.

Except for this limited license, Silvair does not convey any interest in or to the Silvair Commissioning, information or data available via the Silvair Commissioning (the "**Information**"), content or any other Silvair's or any third party's property by permitting you to access the Silvair Commissioning. Except to the extent required by law or as expressly provided herein, none of the content and/or Information may be reverse-engineered, modified, reproduced, re-published, translated into any language or computer language, re-transmitted in any form or by any means, resold or redistributed by you without the prior written consent of Silvair. You may not make, sell, offer for sale, modify, reproduce, display, publicly perform, import, distribute, retransmit or otherwise use the content in any way, unless expressly permitted to do so by Silvair.

In accordance with the use of Silvair Commissioning, You may be able – at Your own risk – to submit to the Account: information, materials, data and parameters concerning performance of the Silvair Commissioning, Lighting System and Devices (e.g. names, project details, area, zones, locations, parameters, scheduling events, profile type etc.) ("**User Content**"). The User Content concerns also data or materials generated by you by using the Silvair Commissioning. You hereby confirm that you: (i) are solely responsible for this User Content, in particular you obtained all required consent under applicable law to use and submit such Content to the Silvair Commissioning, and/or (ii) you have a legal right to this Content. You agree not to provide inaccurate, misleading or false information in connection with your use of the Silvair Commissioning and in particular in connection with your Account for the Silvair Commissioning. Do not add personal data to User Content. Silvair does not screen or evaluate the User Content uploaded by You to the Silvair Commissioning. You acknowledge that You are solely liable for User Content, in particular for any third party intellectual property claims or violation of any applicable law. Silvair liability is excluded thereof.

You hereby grant Silvair the exclusive, irrevocable, perpetual, worldwide, royalty-free, transferable and sub-licensable, license to store, use, modify, reproduce, publish, distribute, transfer, translate, publicly display and exploit User Content submitted or generated by you in any form and its derivative works – for the purpose of performance of the Silvair Commissioning and any other services provided by Silvair without notifying you thereof. To the maximum extent permitted by applicable law and under given license herein – you hereby waive any moral right to the User Content. This license and waiver of moral rights shall survive the termination of the use of the Silvair Commissioning.

You also acknowledge that Silvair also allows you to collaborate on the User Content of other Silvair Commissioning users. The user of the Silvair Commissioning who acts as a "project owner" might control and have access to your User Content in the particular projects created by Silvair Commissioning.

5. Restrictions on Use of the Silvair Commissioning

In addition to other restrictions set forth in these Terms of Use, you agree that:

- (a) You are, at your own risk, responsible for your use of the Silvair Commissioning, including compliance with laws and any export restrictions relating to the use of the Silvair Commissioning, at the place of usage and performance of the SILVAIR Commissioning, in particular to obtain legal consent from the owner/tenant or the disposer of the property where the Lighting System and Devices are installed.
- (b) You shall not use the Silvair Commissioning in violation of these Terms of Use, any laws, regulations, or for any unlawful or abusive, unethical purpose; in any manner that in any application could harm Silvair or any other third party, persons or users (including, but not limited to, death, personal injury or severe physical or property damage).
- (c) You will not place false, illegal, misleading or any information that infringes or violates another party's rights (in particular: intellectual property rights or flights of privacy or publicly) on the Silvair Commissioning.
- (d) You will not use or access any service, information, application or software available via the Silvair Commissioning in a manner not expressly permitted by Silvair.
- (e) You will not input or upload to the Silvair Commissioning any information which contains viruses, Trojan horses, worms, time bombs or other computer programming routines that are intended to damage, interfere with, intercept or expropriate Silvair Commissioning or that infringes the Intellectual Property rights of another.
- (f) You shall not disguise the origin of information transmitted through the Silvair Commissioning.

- (g) You may not use or access the Silvair Commissioning in any way that, in Silvair judgment, adversely affects the performance or function of the Silvair Commissioning or interferes with the ability of authorized parties to access the Silvair Commissioning.
- (h) You may not frame or utilize framing techniques to enclose any portion or aspect of the Intellectual property, without the express written consent of Silvair.
- (i) You shall not modify, adapt or merge the Silvair Commissioning into another program or create derivative works based upon the Silvair Commissioning.

6. Updates and upgrades

You acknowledge that Silvair Commissioning may be modified from time to time, in particular in the scope of the security of Silvair Commissioning. Therefore any aspect of the Silvair Commissioning may be changed, supplemented, deleted, updated or upgraded. Silvair may make such modifications or changes to the Silvair Commissioning at any time at its sole discretion and without notifying you.

7. Termination

You agree that Silvair, at its sole discretion, may terminate or suspend your use of the Silvair Commissioning in particular (i) to protect the Silvair Commissioning and Silvair, as otherwise described in the separate agreements, or (ii) if You act in violation with these Terms of Use, Documentation or applicable law (e.g. in case of configuration of the lighting devices which are not qualified by Silvair, violation of third party intellectual property rights), or (iii) You do not use of the Silvair Commissioning for at least one year.

You are entitled to terminate the use of the Silvair Commissioning at any time (see sec. 3 above), in particular in case you don't agree to the update or upgrade provided by Silvair.

Upon such suspension or termination, You are not entitled to use the Silvair Commissioning and must immediately discontinue use of the Silvair Commissioning. Accessing the Silvair Commissioning or Information after such termination, suspension or discontinuation shall constitute an act of trespass. Further, you agree that Silvair: (a) upon termination or suspension is entitled to delete all data and information concerning usage of the Silvair Commissioning by You; (b) shall not be liable to you or any third party for any termination or suspension of your access to the Silvair Commissioning and/or Information.

Your User Content is stored by Silvair when You use Silvair Commissioning. However, upon termination of such use of the Silvair Commissioning User Content (without any personal data), might be: visible to other users who act as a "project owner" in the Silvair Commissioning and accept these Terms of Use.

Subject to the provision of these Terms of Use, the provisions of Clauses 7, 8, 10-15 shall survive the termination of the use of Silvair Commissioning.

8. Privacy

By using the Silvair Commissioning you may be asked to provide personal data (e.g. name, email address, company, phone number, country of residence). We may obtain information in connection with various activities such as (i) use of Silvair Commissioning, (ii) commissioning activities for Lighting Devices, including Bluetooth mesh provisioning and configuration of such devices, (iii) creating Account, (iv) and contacting you with regard the Silvair Commissioning.

Silvair processes and collects your data in accordance with the Silvair Commissioning Privacy Notice available at www.silvair.com/support. The Silvair Commissioning Privacy Notice governs the use of information collected from or provided by you by the Silvair Commissioning. This includes your personal data as defined in the Silvair Commissioning Privacy Notice. With respect to any individual whose personal

information is provided by you, you represent that you have obtained all necessary consents for the processing of such personal data contemplated by the Silvair Commissionings you are using and by the Silvair Commissioning Privacy Notice.

PLEASE READ ABOUT PERSONAL AND OTHER DATA PROCESSED BY SILVAIR AND ITS USE AS WELL EMPLOYED PRIVACY SAFEGUARDS IN SILVAIR COMMISSIONING PRIVACY NOTICE BEFORE USING THE SILVAIR COMMISSIONING.

Nevertheless, the Silvair Commissioning obtains, uses and stores commissioning data which reflects the configuration of the Devices set up using the Silvair Commissioning. The dataset may include mesh data and mesh metadata (organization, installation and Device information) and in particular the mesh crypto data. Silvair performs anonymization and aggregation of such data, unless it impedes or makes the performance of the Silvair Commissioning impossible. You agree and acknowledge that the intellectual property rights to such data belong exclusively to Silvair and Silvair may use such data to: analyze, enhance and improve the Silvair Commissioning (including developing new features and services), process information regarding Devices (particularly mesh model parameters, mesh subscription lists, mesh composition data, general mesh parameters and commissioning dates), process information regarding the commissioning steps, create and update Device configuration; configure Device behavior, provide additional services to you directly in Lighting System.

9. Fee

Unless otherwise expressed in the separate agreement, Silvair provides you with the Silvair Commissioning free of charge.

Silvair may provide certain additional and payable Silvair Commissioning features, functionalities, Installation Profiles and associated services as well. Silvair may also limit non-payable space for User Content storage, introducing fees for the storing of particular amounts of data.

Furthermore, you accept that some of the functionalities of the Silvair Commissioning may require purchasing and installation of the gateway devices, under separate agreement. If you are interested in the above, please contact Silvair.

10. Warranties & Liability

You agree to use the Silvair Commissioning in strict compliance with all applicable laws, rulings and regulations and in a fashion that does not, in the sole judgment of Silvair, negatively reflect on the goodwill or reputation of Silvair and shall take no actions which would cause Silvair to be in violation of any laws, rulings or regulations applicable to Silvair.

Except for the warranties indicated in these Terms of Use or a separate agreement, the Silvair Commissioning is provided "as-is" and Silvair specifically disclaims any and all express, implied or statutory warranties, including the implied warranties of fitness for a particular purpose, and of merchantability and against infringement. No person is authorized to make any warranty or representation on behalf of Silvair concerning the performance of the Silvair Commissioning. For the avoidance of doubt, it is not a breach of this Clause for the third party to provide warranties on Lighting Devices provided by the third party that are required by local law or regulations, in its own name.

NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT OR ANY PURCHASE ORDER, SILVAIR SHALL NOT BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY NATURE INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, MANUFACTURING EXPENSES, OVERHEAD, DATA, INJURY TO REPUTATION OR LOSS TO YOU, ARISING OUT OF OR IN CONNECTION WITH THE USE OF SILVAIR COMMISSIONING, INCLUDING THE PURCHASE, SALE, PERFORMANCE OR FAILURE OF THE SILVAIR COMMISSIONING, WHETHER SUCH

LIABILITY ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF (I) SILVAIR OR YOU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR (II) SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.

The liability of Silvair shall be excluded when You or a third party uses the elements of the subject matter of these Terms of Use in breach of their purpose or method of their operation.

You also acknowledge that proper performance of the Silvair Commissioning depends on the external factors beyond Silvair's control, in particular on proper functioning (including environmental factors), configuration and installation (in proper manner and according to the technical requirements) of the Devices and the Lighting System, connectivity and communication system used to operate the Devices and the Lighting System. Therefore, Silvair has no responsibility and liability in this respect thereof and Silvair is not liable for any damages and claims caused by such factors beyond Silvair's control.

Silvair reserves the right to introduce a break in the operation of the Silvair Commissioning or its certain functionalities. If there is an intention to implement a break, Silvair will notify You about it by posting relevant information or a message in the Silvair Commissioning.

NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS OF USE OR ANY PURCHASE ORDER OR ANY OTHER AGREEMENT OR WRITING BETWEEN YOU AND SILVAIR, AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL A SILVAIR'S LIABILITY ARISING OUT OF OR RELATING TO THESE TERMS OF USE OR THE AGREEMENT, INCLUDING WITH REGARD TO THE USE OF THE SILVAIR COMMISSIONING AND COMMISSIONING OF LIGHTING DEVICES, EXCEED \$ 1,000. THE FOREGOING LIMITATIONS WILL SURVIVE AND APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY SET FORTH HEREIN.

Except for obligations to pay money, neither Party will incur any liability to the other Party on account of any loss or damage resulting from any delay or failure to perform all or any part of the Agreement if such delay or failure is caused, in whole or in part, by events, occurrences or causes beyond the reasonable control of the Parties. Such events, occurrences or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, pandemia, failures of the Internet, earthquakes, fire and explosions, but the inability to meet financial obligations is expressly excluded.

Silvair shall not be liable for the consequences of installing or sending any malicious software, phishing or any other practices undertaken by other entities to the Silvair Commissioning.

11. Jurisdiction

To the fullest extent permitted by law, you hereby expressly agree that any proceeding arising out of or relating to your use of the Silvair Commissioning, Information and content shall be instituted in a court competent for the registered office of the Silvair in Poland, and you expressly waive any objection that you have now or hereafter to the selection of the venue or to the jurisdiction of any such proceeding. You agree that any claim or cause of action arising out of or related to your use of the Silvair Commissioning, Information and content must be filed within one (1) year after such claim or cause of action arose.

12. Governing Law and Language

The controlling language for these Terms of Use and the Silvair Commissioning is English.

The validity, interpretation, construction and performance of these Terms of Use and all acts and transactions pursuant hereto and rights and obligations of Silvair and You hereto shall be governed, construed and interpreted in accordance with the laws of Poland, without giving effect to principles of conflicts of law that would result in the application of the laws of another jurisdiction. All disputes arising out of or related to these Terms of Use shall be finally settled under the Rules of arbitration of the International

Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be Warsaw, Poland. The language to be used in the arbitral proceedings shall be English.

13. Export restriction

The Silvair Commissioning is based in the European Union. The applicable jurisdictions control the export of products and information. You agree to comply with all such applicable restrictions and not to export or re-export any portions of the Silvair Commissioning to countries or persons prohibited under the applicable export control laws or regulations. If you access and download the content or Information, you represent that you are not in a country where such export is prohibited or are not a person or entity to which such export is prohibited. You are solely responsible for compliance with the laws of your local jurisdiction and any other applicable laws regarding the import, export, or re-export of the content.

14. Miscellaneous

Unless otherwise expressed in the Terms of Use, You may not assign these Terms of Use or any of your interests, rights or obligations under these Terms of Use.

If any term, condition or provision of the Terms of Use or portion thereof is found to be invalid, unlawful or unenforceable to any extent, the Parties shall proceed under the law chosen to govern the Agreement. Such an invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will remain valid and enforceable to the fullest extent permitted by law.

Except as expressly provided in a separate license, service or other written agreement between You and Silvair, these Terms of Use and Documentation constitute the entire agreement between You and Silvair with respect to the use of Silvair Commissioning, Information and content contained therein, and supersede all discussions, communications, conversations and agreements concerning the subject matter hereof.

You may preserve these Terms of Use in written form by printing them for your records, and you waive any other requirement that these Terms of Use be evidenced by a written document.

15. Contact info

Silvair tries – to the best of its ability – to provide you with the best user experience – in solving their problems related to functioning of the Silvair Commissioning, and undertakes actions to improve the quality of performance of the Silvair Commissioning.

If you have any questions, request or comments regarding the Silvair Commissioning, please submit it to Silvair Customer Service to: support@silvair.com.