



# END USER LICENSE AGREEMENT (EULA)

31 JANUARY 2023



## End User License Agreement (EULA)

Updated: 31 January 2023

By and between

BLACKBIRD ApS  
CVR number (Danish Company Register number 37 19 24 22)  
Nyropsgade 37, 3<sup>rd</sup> floor  
1602 København  
Denmark  
(in this EULA referred to as BB)

and

The User

### 1. Definitions

- **Blackbird Cloud Service** is cloud owned, operated, and maintained by BB using a recognized international Cloud Service Provider (i.e., Amazon) responsible for receiving and processing data from the User's Factbirds® (installed anywhere in the world). It is a common cloud which is used by all BB customers.
- **EULA** means this End User License Agreement, including any amendments to this EULA from time to time.
- **Factbird®** is the box developed by BB and purchased by the User from BB, which collects data and transmits the timestamped values to the Blackbird Cloud Service *via* the mobile network or WIFI.
- **Factbird® View** is the box developed by BB and purchased by the User from BB, responsible for video processing before timestamped video is streamed to the cloud database. Factbird® View requires internet access over WIFI or ethernet. The type of camera is User and application specific.
- **Energy Meter Devices** are devices manufactured by a well-established third party within the industry (i.e., Siemens) and provided by BB to its customers for energy measurement purposes, including energy flow indicator, and active energy pulse indicator. The devices measure electrical variables in power distribution. The measured information is extracted by BB and transmitted to the Blackbird Cloud Service application for the User's visualization in relation to other metrics.
- **Sensors** are electronic devices manufactured by a recognized third-party within the industry (i.e., Omron) and provided by BB to its customers for various environmental phenomena monitoring purposes. The sensors measure and process physical input such as heat, light, pressure and motion which data is converted and output in a certain readable format by Factbird® devices. BB provides a vast selection of Sensors, amongst others distance, diffuse, humidity, inductive, temperature, vibration and current sensors.

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- **Force Majeure Event** means an event, or a series of related events, that is outside the reasonable control of the Party affected, including failures of the internet, any public telecommunications network, mobile network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars, or outbreak of epidemic or pandemic disease, institution of quarantine or lock down, or other similar acts of governmental institutions.
- **License** means the license granted by BB to the User under this EULA.
- **Party and/or Parties** means BB or the User, or BB and the User, as the context may require.
- **Service and Support** means any service and support that BB provides to the User.
- **Software** means software cloud application developed, owned, and controlled by BB, which the User has access to through the Blackbird Cloud Service.
- **Upgrade** means all improvements in the Software made by BB that are made generally available to the User.
- **Use of Factbird® Out of Scope** means activities other than monitoring and analyzing a process by using the Factbird® hardware and the Software.

## 2. Background

2.1 The User seeks to collect and analyze its production data. Towards this end, BB and the User have agreed that BB will collect the User's data using hardware developed by BB and purchased by the User, and software developed, owned, and controlled by BB.

## 3. Scope of Applicability

3.1 This End User License Agreement (EULA) applies to all sales of Hardware and or Hosted services by BB notwithstanding any conflicting, contrary, or additional terms and conditions in any purchase order or other communication from the User. No such conflicting, contrary, or additional terms and conditions shall be deemed accepted by us unless and until BB expressly confirms our acceptance in writing. To the extent there is any conflict between the terms of this EULA and any Order Confirmation, the terms of the EULA shall control.

3.2 This EULA, together with the Order Confirmations, contain the entire understanding of the Parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written.

## 4. Quotations and Order Confirmations

4.1 All offers made by BB are open for acceptance within thirty (30) calendar days from the date of issue, unless otherwise specifically stated therein, and are subject to the availability of the services and hardware offered. BB has the right to reschedule a new delivery date.

4.2 No purchase order shall be binding on BB unless and until confirmed by BB in writing.

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## 5. License, Prices, and Terms of Payment

5.1 Subject to the terms and conditions of this EULA, BB hereby grants the User a non-exclusive, non-transferable right to use the Software for the User's own internal business operations only. In conjunction with this License, BB grants to the User the rights to the Service and Support, and Upgrade as described in Clauses 7 and 8 below.

5.2 The cost for the license shall be set forth in our order confirmation. All prices are exclusive of taxes, impositions, import fees and other charges, including, but not limited to, sales, use, excise, value added, and similar taxes or charges imposed by any government authority. Such or similar additional charges – whether imposed to the User or to BB – will be paid by the User. If any governmental authority requires BB to remit taxes and/or any other charges, BB may do so and invoice the equivalent amount to the User which the User shall be bound to pay.

5.3 For each license granted to the User, BB will charge an annual License Fee.

5.4 The License Fee is invoiced to the User fourteen (14) calendar days after the date of the Order Confirmation provided by BB to the User and thereafter on an annual basis.

5.5 Payments due to BB under this Agreement will be made within thirty (30) days from invoice date, unless expressly stated otherwise in our order confirmation without offset or deduction.

5.6 The License Fee will be annually increased according to DK consumer index pricing, however with a minimum increase of two (2) % of the License Fee.

5.7 BB further reserves the right to increase the License Fee in relation to significant feature or product updates. BB shall provide User with three (3) months advanced notice of any such increase.

5.8 If the User fails to pay any invoice within seven (7) calendar days of the due date of payment, BB may suspend delivery of any services, purchase order or any remaining balance thereof until payment is made or terminate delivery of any services, purchase order or any remaining balance thereof by providing written notice of termination to the User within seven (7) calendar days of the expiration of the grace period. Further, BB may charge the User interest from the due date to the date of payment at the rate of 1 ½ % per month. The foregoing rights shall be in addition to, and not in limitation of, any other rights or remedies to which BB may be entitled at law or in equity .

5.9 The price for hardware will be agreed upon separately based on the User's specific needs.

5.10 Title to hardware delivered shall remain vested in BB and shall not pass to User until the hardware has been paid for in full. If the User fails to pay any invoice within fourteen (14) calendar days of the due date of payment, BB may retake the hardware covered by the invoice. The User must insure all hardware delivered to its full replacement value until title to the hardware has passed to the User and shall provide proof of such insurance to BB upon request.

5.11 .

## 6. Trial License Subscription

6.1 If the User is granted a free Trial License Subscription, the User is given forty-five (45) days access to use the Software. Upon expiry of the Trial License Subscription, Trial License Subscription is automatically converted to a License in accordance with Clause 5 (**Acceptance of License**) unless the User prior to expiry of the Trial License Subscription has cancelled the Trial License Subscription by e-mail to sales@blackbird.online.

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6.2 If the User has cancelled the Trial License Subscription the User must without any delay return all hardware belonging to BB. If the hardware has not been returned within fourteen (14) calendar days from the cancelation, User shall pay to BB the full purchase price of the hardware.

## 7. Services and Support

### 7.1 Service Level Agreement:

- BB undertakes to respond to Service and Support request made by the User within one (1) business day of such request having been made by the User, during between 9.00 and 16.30 Danish time.
- Subject to the provisions of this EULA, BB expects a Software uptime of 99.9%. It is clarified that BB does not provide an uptime guarantee.

### 7.2 Storage of data, access to data and ownership of data:

- The User's data from its Factbird® will be stored in the Blackbird Cloud Service. BB will store data for a three (3) year period unless otherwise agreed between BB and the User. As for video from the User's Factbird® View, if any, BB will store the videos for a one (1) month period unless otherwise agreed between BB and the User.
- Ownership of data and access to data: A User owns the data collected by using the User's Factbird® and the User can download a copy of the data at any time and for any reason, by using the download function on the Software.

### 7.3 BB access to User data:

BB will access the User's data on the Blackbird Cloud Service under the following circumstances:

- Service and Support to be provided by BB in accordance with this Clause 7.
- Upgrades in accordance with Clause 8.
- Customization in accordance with Clause 9; and
- To correct errors, test functions, update the Software and data structures.

**BB has no right to use the User's data commercially.**

## 8. Upgrade

8.1 During the term of the EULA, BB will maintain and upgrade the Software. Upgrades will be free of charge unless BB notifies the User that the User will be charged for the Upgrades-in which case the User can choose not to Upgrade but continue with the License already in use.

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## 9. Install

9.1 Install of hardware is not included amongst the Services and Support provided by BB to the User.

9.2 User is responsible for install of any hardware provided by BB in connection with the EULA. This includes intern alia all formalities, qualifications, competences, authorizations and certifications required by law and/or pursuant to business practice within the industry in question.

9.3 BB is not liable for any issue, failure or injury connected to install nor any loss suffered by the User due to the install including – however not limited to – indirect losses consisting of loss of profits, business, revenue and goodwill. This applies whether it occurs on the hardware, the User's system in which the hardware is integrated or any other system.

9.4 The User is responsible for maintenance of both the hardware provided by BB and the User's system in which the hardware is integrated.

9.5 The User shall determine and take out the types and amounts of insurance coverage relevant to the User in relation to this EULA.

## 10. Customization

10.1 BB will have the exclusive right to carry out any customization of the Software, as may be agreed upon between BB and the User.

10.2 BB delivers Energy Meter Devices and Sensors if requested by the User. As a starting point, the Energy Meter Devices will be manufactured by Siemens and the Sensors by Omron, however, BB reserves at all times the right to select the appropriate manufacturer. Upon specific request from the User, BB will provide a different brand provided that the User commits to pay the additional costs related to procurement thereof. The specific terms and conditions in this regard shall be negotiated separately and agreed upon between BB and the User.

## 11. IP Rights and Secure Code

11.1 The Software, including without limitation, its object code and source code and any and all Upgrades, whether provided to the User or not, are the sole property of BB. The User may not exercise any rights, title or interest in the Software, including without limitation any intellectual property rights in and to the Software, except to the extent of the limited license to use as granted to the User under this EULA. This EULA is not an agreement of sale and no title, intellectual property rights or ownership rights to the Software are transferred to the User pursuant to this EULA. The User acknowledges and agrees that the Software and all ideas, methods, algorithms, formulae, processes, and concepts used in developing or incorporated into the Software, all future upgrades and all other improvements, revisions, corrections, modifications, enhancements, releases in, of or to the Software, all derivative works based upon any of the foregoing and all copies of the foregoing are trade secrets and the exclusive property of BB.

11.2 The User shall not attempt to reverse engineer the Software.

## 12. Termination

12.1 The User may terminate this EULA upon ninety (90) days written notice.

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12.2 If the User has cancelled this EULA, the User must without any delay return all hardware belonging to BB. If the hardware has not been returned within ten (10) days from the cancellation, BB is entitled to invoice the User for all non-returned hardware in accordance with Clause 5.

12.3 BB may terminate this EULA upon one hundred eight (180) days written notice.

### **13. Premature Termination**

13.1 Each party has the right to terminate this EULA if the other party materially breaches any obligation under this Agreement, (other than the User's fail to pay any invoice hardware in accordance with Clause 5) and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified of the breach.

13.2 Notice of termination with immediate effect may also be served in case either party files for bankruptcy protection; or enters liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation; or has an administrative receiver appointed over the whole or any part of its undertaking.

### **14. Limitation of Liability, Warranties and Force Majeure**

14.1 THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE THE ONLY WARRANTIES MADE BY BB. BB SPECIFICALLY EXCLUDES ANY OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

14.2 For breach or default by BB of any of the provisions of this EULA, BB's entire liability and the entire liability of individual BB personnel, employees, and agents, regardless of the form of action, whether based on contract or tort, including negligence, including, without limitation, the furnishing, the failure to furnish or the quality of any service, equipment or any software, shall in no event exceed DKK 100.00.

14.3 IN NO EVENT WILL BB BE LIABLE FOR DAMAGES HEREUNDER FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL LOSS (EVEN IF BB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS) INCLUDING, BUT NOT LIMITED TO, LOST BUSINESS REVENUES, LOSS OF PROFITS, LOSS OF DATA, FAILURE TO REALIZE EXPECTED PROFITS OR SAVINGS OR OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND OR ANY CLAIM AGAINST User BY ANY OTHER PERSON.

14.4 Any claim that the User may have arising out of the EULA shall expire three (3) months after the point in time that the User has, or reasonably should have, become familiar with the circumstance(s) on which the claim is based.

14.5 The Party invoking a Force Majeure Event shall notify the other Parties in writing and without delay of the occurrence of the Force Majeure Event, and of the cessation thereof.

14.6 In case of the occurrence of a Force Majeure Event neither party can terminate this EULA or claim monetary damages from the other Parties. However, if such Force Majeure Event lasts more than ninety (90) days, either party hereto shall be entitled to terminate this EULA by written notice to the other party with immediate effect.

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## 15. Non-assignment by the User

- 15.1 The User is not allowed to assign or transfer any or all its rights under this EULA to a third party without written consent from BB.

## 16. Confidentiality

- 16.1 Each Party undertakes that it will not at any time hereafter use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority, any confidential information concerning the business or affairs of the other Party which may have or may in future come to its knowledge and each Party shall use its reasonable endeavors to prevent the publication or disclosure of any confidential information concerning such matters.

## 17. Change of terms and conditions to this EULA

- 17.1 BB reserves the right to make updates and changes to the terms and conditions of this EULA.
- 17.2 BB will give the User thirty (30) calendar days' notice of any updates and changes to this EULA by e-mail.

## 18. Governing Law and Venue

- 18.1 This Agreement shall be governed by and construed in accordance with Danish Law.
- 18.2 Any dispute or claim arising out of or in connection with this EULA or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the Rules of Procedure of the Danish Institute of Arbitration (Copenhagen Arbitration). The member(s) of the Arbitration Tribunal shall be appointed by the Institute. The arbitral proceedings shall take place in Copenhagen, Denmark. The language of the arbitral proceedings shall be English unless otherwise agreed.

## 19. Notice

- 19.1 All notices under this Agreement shall be in writing and shall be given by either party by prepaid mail, fax, email, or hand delivery to the other party at the address below or at such other address as has been provided in writing.

BB:

User:

## 20. Counterparts/Execution

- 20.1 This EULA may be executed in multiple counterparts, all of which together shall constitute one agreement. Signatures upon this EULA transmitted by facsimile or electronic mail shall have the same legal and binding effect as original signatures.

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**BLACKBIRD**  
SMART DATA COLLECTION

**Blackbird Aps**

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