

# END USER LICENSE AGREEMENT (EULA)

DATE \_\_\_\_\_

Factbird ApS  
Nyropsgade 37, 3rd floor, 1602 København, Denmark  
VAT number: 37192422

End User License Agreement (EULA)  
Updated: **DATE** \_\_\_\_\_

By and between

FACTBIRD ApS  
CVR number (Danish Company Register number 37 19 24 22)  
Nyropsgade 37, 3rd floor  
1602 København  
Denmark  
(in this EULA referred to as "FB")

and

**COMPANY** \_\_\_\_\_  
(in this EULA referred to as the "User")

## 1. Definitions

- 1.1 "Data Act" means the EU Data Act (Regulation (EU) 2023/2854) as amended from time to time.
- 1.2 EULA means this End User License Agreement, including any amendments to this EULA from time to time.
- 1.3 Factbird Cloud Service is owned, operated, and maintained by FB using a recognized international Cloud Service Provider (i.e., Amazon) responsible for receiving and processing User Data from the User's Factbird®, installed anywhere in the world. The Factbird Cloud Service include several applications, including Production Insights, Connected Operations and Knowledge Excellence.
- 1.4 Factbird® is the box developed by FB and purchased by the User from FB, which collects User Data and transmits the timestamped values to the Factbird Cloud Service via the mobile network or WIFI.

- 1.5 Factbird® VIEW is the box developed by FB and purchased by the User from FB, responsible for video processing before the 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.
- 1.6 Factbird® DUO is the box developed by FB and purchased by the User from FB, which automatically gathers data from the customer's sensors. The measured information is extracted by FB and transmitted to the Factbird Cloud Service for the User's visualization in relation to other metrics.
- 1.7 Energy Meter Devices are devices manufactured by a well-established third party within the industry (i.e., Siemens) and provided by FB 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 FB and transmitted to the Factbird Cloud Service application for the User's visualization in relation to other metrics.
- 1.8 Sensors are electronic devices manufactured by a recognized third-party within the industry (i.e., Omron) and provided by FB 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. FB provides a vast selection of Sensors, amongst others distance, diffuse, humidity, inductive, temperature, vibration, and current sensors.
- 1.9 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.
- 1.10 License means the license granted by FB to the User under this EULA.
- 1.11 Party and/or Parties means FB or the User, or FB and the User, as the context may require.
- 1.12 Software Service means any software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted by FB.
- 1.13 Support means any support that FB provides to the User.
- 1.14 Upgrade means all improvements in the Software Service made by FB that are made generally available to the User.
- 1.15 Use of Factbird® Out of Scope means activities other than monitoring and analyzing a process by using the Factbird® hardware and the Software Service.
- 1.16 User Data means any data that can be gathered from the User in accordance with the Data Processing Agreement (Appendix 1)

## 2. Background

- 2.1 The User seeks to collect and analyze its production data. Towards this end, FB and the User have agreed that FB will collect the User Data using hardware developed by FB and purchased by the User, and Software Service developed, owned, and controlled by FB.

### 3. Scope of Applicability

- 3.1 This End User License Agreement (EULA) applies to all sales of hardware and or Software Service provided by FB 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 FB 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, contains 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, Order Confirmations, Effective date and Duration.

- 4.1 All offers made by FB 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 Software Service and hardware offered. FB has the right to reschedule a new delivery date.
- 4.2 No purchase order shall be binding on FB unless and until confirmed by FB in writing.
- 4.3 This contract comes into effect on when the User accepts the Offer/Quotation in writing.
- 4.4 The contract is entered into for a period of 12 months ("Contract Period") or as detailed in original quotation and will unless otherwise agreed between the Parties, thereafter automatically be extended for up to 12 months at a time ("Extension Period").
- 4.5 The Contract Period in this Contract does not include the underlying subscription agreements, which can be terminated in accordance with section 12 of this EULA.
- 4.6 If the Contract expires without either FB or the User having terminated the Contract, then FB will continue the delivery of services covered by this Contract in accordance with FB's general terms and conditions for the delivery and operation of FB's services as well as

service-specific subscription terms, supplementary terms, and list prices that apply to the relevant subscription forms, as shown on FB's website.

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

- 5.1 Subject to the terms and conditions of this EULA, FB hereby grants the User a non-exclusive, non-transferable right to use the Software Service for the User's own internal business operations only. In conjunction with this License, FB grants 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 FB – will be paid by the User. If any governmental authority requires FB to remit taxes and/or any other charges, FB 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, FB 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 FB to the User and thereafter on an annual basis.
- 5.5 Payments due to FB under this Agreement will be made within thirty (30) days from the invoice date, unless expressly stated otherwise in our order confirmation without offset or deduction.
- 5.6 The License Fee will be increased annually according to DK consumer index pricing, however with a minimum increase of two (2) % of the License Fee.
- 5.7 FB further reserves the right to increase the License Fee in relation to significant features or product updates. FB shall provide the 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, FB 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, FB 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 FB 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 FB and shall not pass to the 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, FB may retake the hardware covered by the invoice. The User must ensure 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 FB upon request.

## 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 Service. 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@factbird.com](mailto:sales@factbird.com)

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

## 7. Services and Support

### 7.1 Service Level Agreement:

- The Users' subscription to use the services including the provision of support services as specified on our pricing page here: <https://www.factbird.com/pricing>
- FB undertakes to respond within the response time specified on the pricing page, measured from the time FB received the request by phone or email to the first response from a Support Agent/Engineer, during normal business days (DK) between 9.00 and 16.30. Only the opening hours are attributed to the response time.
- Subject to the provisions of this EULA, FB guarantees a Software Service uptime of 99.9% on core Services. Uptime guarantee is not including circumstances which are outside FB's control, e.g. the Users local WiFi network that provides connectivity to Factbird hardware/services. FB commits to make uptime of core components available to customers

here: <https://factbird.statuspage.io/> It is clarified that FB does not provide credits or reimbursements on the uptime guarantee.

- Factbird's applications include an event driven automation engine, allowing the user to configure custom triggers and automated actions, latency or non-appearance may occur due to high system or AWS server load.
- Customers must contact Factbird support on support@factbird.com prior to returning any products to Factbird for replacement. Customer is responsible for paying for freight, taxes and insurance for all product returns. Customer must return the product to Factbird within 30 days from the replacement is shipped. Unreturned or damaged products will be invoiced at the list price.

7.1.1 The following service levels shall apply specifically to the product Factbird® DUO:

- FB is committed to providing critical security updates and bug fixes for the Factbird® DUO device for a period of three (3) years from the last production date of the Factbird® DUO device ("Software Update Guarantee"). These updates may include bug fixes, security patches, and new features.
- FB will use commercially reasonable efforts to make these updates available to all Users of Factbird® DUO.
- After the expiration of the Software Update Guarantee, FB may, at its sole discretion, continue to provide software updates for the Factbird® DUO device. However, FB is not obligated to do so. If such software updates require payment, FB will notify the User accordingly, as outlined in Clause 8.

7.2 Storage of User Data, access to User Data and ownership of User Data:

- The User Data from its Factbird® will be stored in the Factbird Cloud Service. FB will store User Data for a minimum of one (1) year period or as specified on our pricing plans. As for video from the User's Factbird® View, if any, FB will store the videos for one (1) month period or as specified on our pricing plans.
- Ownership of User Data and access to User Data: A User owns the User Data collected by using the User's Factbird® and the User can download a copy of the User Data at any time and for any reason, by using the download function or API function on the Software Service. Factbird commits to make all the Users data accessible to the users through an API.

7.3 FB access to User Data:

- FB will access the User's Data on the Factbird Cloud Service under the following circumstances:

- Service and Support to be provided by FB 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 Service and data structures.
- FB shall be entitled to file material on the Software Service in question for the internal purpose of continued development of FB's products. If any of the User's Data is in any form utilized externally by FB, the User's Data will be processed and exploited in anonymous form and in no way traceable back to the User in accordance with the Data Processing Agreement (Appendix 1).

7.4 To the extent the Software Services are subject to the Data Act, the User's right to switch to another provider of data processing services is regulated in Appendix 2.

## 8. Upgrade

8.1 During the term of the EULA, FB will maintain and upgrade the Software Service. Upgrades will be free of charge unless FB 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.

## 9. Install

9.1 Installation of hardware is not included amongst the Software Service and Support provided by FB to the User.

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

9.3 FB 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 the maintenance of both the hardware provided by FB 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 FB will have the exclusive right to carry out any customization of the Software Service, as may be agreed upon between FB and the User.

10.2 FB 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, FB reserves at all times the right to select the appropriate manufacturer. Upon specific request from the User, FB 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 FB and the User.

## 11. IP Rights and Secure Code

11.1 The Software Service, 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 FB. The User may not exercise any rights, title or interest in the Software Service, including without limitation any intellectual property rights in and to the Software Service, 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 Service are transferred to the User pursuant to this EULA. The User acknowledges and agrees that the Software Service and all ideas, methods, algorithms, formulae, processes, and concepts used in developing or incorporated into the Software Service, all future upgrades and all other improvements, revisions, corrections, modifications, enhancements, releases in, of or to the Software Service, all derivative works based upon any of the foregoing and all copies of the foregoing are trade secrets and the exclusive property of FB.

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

## 12. Termination

12.1 The User may terminate this EULA upon ninety (90) days written notice prior to the end of the Contract Period or during the Extension Period.

- 
- 12.2 If the User withdraws from this contract before the expiry of the Contract Period or during an Extension Period, FB is entitled to compensation for the Customer's failure to fulfill the contract sums for the remaining part of the Contract Period respectively the Extension Period. If the User, during the Contract Period or during an Extension Period, cancels one or more, but not all of the selected services, FB considers it as a partial cancellation of the Contract. The Contract continues for the remaining services. In both of the above cases, FB may demand compensation in accordance with the provisions of the point below.
- 12.3 The compensation constitutes the difference between the customer's annual contract value and the realized value for the provided services. Compensation for early termination is calculated in total upon exit applicable for the remaining part of the Contract Period respectively the Extension Period according to the above principles. The customer's annual contract value and calculation of fulfillment and charging of compensation are accounted for per product area and Software Service.
- 12.4 If the User has cancelled this EULA, the User must without any delay return all hardware belonging to FB. The User must pay for the return of all hardware belonging to FB. If the hardware has not been returned within ten (10) days from the cancellation, FB is entitled to invoice the User for all non-returned hardware in accordance with Clause 5.
- 12.5 FB may terminate this EULA upon one hundred eight (180) days written notice.
- 12.6 Notwithstanding section 12.1-12.5, to the extent the Software Services are subject to the Data act, the User may terminate the Agreement in accordance with Appendix 2.
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 FB. FB 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.
- 14.1.1 In accordance with Clause 14.1 the following warranties shall apply specifically to the product Factbird® DUO:
- Factbird warrants the Factbird DUO device against defects in materials and workmanship for a period of two (2) years from the date of purchase as specified in the specific purchase/subscription agreement ("Factbird® DUO Warranty Period").
  - During the Factbird® DUO Warranty Period, FB will, at its sole discretion, repair or replace any defective device with a similar or better version free of charge.
  - To obtain warranty service, the end-user must contact FB customer support as specified in Clause 7.1.
  - Notwithstanding the foregoing, the warranty under Clause 14.1.1 does not cover defects caused by:
    - Normal wear and tear.
    - Misuse, abuse, neglect, or improper storage.
    - Unauthorized modification or repair.
    - Damage caused by external factors, such as power surges or extreme temperatures or Force Majeure Events as defined in Clause 1.8.
    - Gross negligence.
- 14.2 For breach or default by FB of any of the provisions of this EULA, FB's entire liability and the entire liability of individual FB 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 Service, shall in no event exceed DKK 100.000.
- 14.3 IN NO EVENT WILL FB BE LIABLE FOR DAMAGES HEREUNDER FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL LOSS (EVEN IF FB 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 the 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.
- 14.7 FB acknowledges that its product may be utilized or deployed by the User in territories/markets where the product might not possess the necessary certifications or regulatory approvals beyond CE (EU) and FCC (US).
- 14.8 FB explicitly disclaims any direct or indirect responsibility or liability associated with the absence of local certifications or regulatory approvals in territories/markets where FB's product is utilized.
- 14.9 The User acknowledges and agrees that they are solely responsible for ensuring compliance with all local regulations, certifications, or legal requirements pertaining to the deployment, use, or importation of FB's product in their respective territories/markets. This includes, but is not limited to, obtaining any necessary certifications, authorizations, or approvals required by local authorities before deploying or utilizing the product.
- 14.10 The User agrees to indemnify and hold harmless FB, its affiliates, officers, directors and, and agents from any claims, liabilities, damages, costs, or expenses (including legal fees) arising out of or related to the use, deployment, or non-compliance of the product with local certifications or regulatory requirements in their respective territories/markets.
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 FB.
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 FB reserves the right to make updates and changes to the terms and conditions of this EULA.

17.2 FB 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.

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.