

END USER LICENSE AGREEMENT

The terms and conditions contained in this End User License Agreement together with any Orders or Specifications are the complete agreement regarding the Product.

Part 1: General terms

1. Introduction

Please read the terms and conditions of this End User License Agreement (“Agreement”) carefully: This end-user license agreement is a legal document between You and ABB for the Product OptiFact as further described below.

This End User License Agreement (“Agreement”) is an agreement between You and ABB (“ABB”) for using the Product and not with any other party including any party from whom you may have downloaded the Software or who may have configured it. The terms and conditions contained in this Agreement apply to Your use of the Product.

By downloading, installing, copying, accessing, clicking on an “accept” button, or otherwise using the Product, You are agreeing to the terms of this agreement. If You are downloading, installing, copying, accessing, clicking on an “accept” button, or otherwise using the Product on behalf of a company or other entity, “You” means that entity, and You are binding that entity to this Agreement. You represent and warrant that You have the legal power and authority to enter into this Agreement and that, if the licensee is an entity, this Agreement is entered into by an employee or agent with all necessary authority to bind that entity to this Agreement.

If You have obtained a license of the Product for evaluation purposes, Your use of the Product is only permitted in a non-production environment and for the period limited by the date specified in the Order. Notwithstanding any other provision in this EULA, an evaluation license of the Product is provided “AS-IS” without indemnification, support or warranty of any kind, expressed or implied.

If You do not agree to these terms: Do not (i) download, install, copy, access or otherwise use the Product (ii) click on an “accept” button; and promptly return the unused media, documentation, and proof of entitlement to the party from which it was obtained. If the Product was downloaded or otherwise installed, please destroy all copies of the Product.

2. Definitions

“ABB” means the ABB entity specified in the Order.

“Authorized Use”: the specified level at which You are authorized to execute or run the Product as specified in the Order.

“ABB Data Privacy Policy” means ABB's data privacy policy, available at <https://new.abb.com/privacy> as may be updated by ABB from time to time;

“Product” shall mean all OptiFact software and related information provided by ABB under this agreement. OptiFact Software includes computer software and a license certificate, and may include a license key, associated media, printed materials, and online or electronic documentation. The Product software includes a number of functional options and selectable configuration and capacity limits which are specified in the license certificate. The Product may include software owned by a third party. The list of such third-party software is available within the “about” section of OptiFact. For such software separate license terms and conditions may apply.

Specifications: means the end user technical documentation created by ABB and provided with the Product.

“Third Party Software”: means object code versions of software (computer programs assembled, compiled, or converted to magnetic or electronic binary form on software media, which are readable and usable by computer equipment) as licensed by ABB from third parties and sublicensed to You.

“Order”: the document executed by both ABB and you by which you order the Product.

“You” and “Your”: the individual or legal entity.

3. Installation requirements

As part of OptiFact, ABB provides the following applications which are mandatory to be downloaded and installed by the Customer exclusively via the installer provided at the time of purchase.

- Edge Portal – as described on <https://tinyurl.com/3jv4p9r7> – the central settings and configuration application used to manage your devices, users, roles, permissions and access all other applications.
- Edge Config. Tool – as described in <https://tinyurl.com/4ka38xuw> – networking and technical configuration application used to administer your OptiFact system.
- Data Manager as described in <https://tinyurl.com/mr4dpcfr> – application to define which data to collect, from which devices and where to send it. All data managed through this tool remains the sole property of the Customer and ABB will not have access, unless explicitly shared by the Customer for support operations.
- Data Studio – as described in <https://tinyurl.com/2cyzye7e> - application to manage data flows and run specific operations and calculations on the data gathered by the Data Manager.
- Process Modeler – application to build processes and organize data logically so that it can be analyzed in other applications.
- Insights – as described in <https://tinyurl.com/43cwu5bw> – business intelligence application to display data to users through a series of widgets and dashboards.

4. Grant of license

ABB hereby grants You a non-exclusive, non-transferable license to use the Product for the duration of the Agreement and up to the Authorized Use as specified in the Order provided that You have lawfully obtained the Product.

The Product is owned or licensed by ABB and is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Product is licensed, not sold.

5. License limitations

You shall have no right to access, copy, alter, make publicly available or in any other way exploit or use the source code of the Product. You agree that You shall not, except to the extent that such actions are explicitly permitted by mandatory applicable laws, attempt to reverse compile, decompile, disassemble, or reverse engineer the Product, nor shall You amalgamate, amend, incorporate, modify, reproduce or otherwise alter the same into or with any other software.

You shall not attempt to make any part of the Product available to any third party or otherwise allow access to the same to any third party if not strictly necessary for the deployment of the Product and in any case under its direct liability and responsibility.

6. Use limitations

You may not use the product for planning, construction, maintenance, or operation, directly or indirectly, of nuclear facilities, flight navigation, aircraft control, air traffic control and ground support equipment, missile technology, and facilities for weapons of mass destruction, unless this use is explicitly approved by ABB in writing in each and every case. Such approval shall be granted only if ABB’s liability for damage to property, personal injury and death, damage to plant as well as property located there or in its vicinity, and all consequential and incidental costs and losses connected with any of the aforesaid is excluded by law and by contract to the satisfaction of ABB.

For the purposes of this agreement the term “nuclear facilities” shall mean any nuclear facility, including, but not limited to, nuclear power plants, nuclear fuel manufacturing plants, uranium enrichment plants, uranium conversion plants, spent nuclear fuel conversion plants, spent nuclear fuel storage plants, and research reactors. The term “facilities for weapons of mass destruction” shall mean any facility for design, manufacturing, storage,

transportation, controlling, dispatching, and destruction of weapons of mass destruction, including, but not limited to, nuclear, chemical, and biological weapons.

7. Copies of Licensed Product

You may make a reasonable number of backup copies of the Product as is consistent with Your normal backup or disaster recovery procedures, or as otherwise permitted in the applicable Order. You shall maintain a log of the number and location of all originals and copies of the Product, which shall be provided to ABB upon request. Any copies made for disaster recovery purposes may not be used by You in any manner except in the event of a disaster. In the event of a disaster which causes You to use any copy of the Licensed Software, You must promptly inform ABB of the disaster and must stop using such copy promptly after the disaster is abated.

8. Proprietary rights

As between the parties, all right, title and interest, including all Intellectual Property Rights, in and to the Software or other ABB intellectual property (collectively and for the purposes of this Sections referred to as “**ABB Content**”) are and remain exclusively with ABB or its licensors. You shall have no rights in and to the ABB Content, other than those expressly granted pursuant to this Agreement.

You will not (i) use the ABB Content for any third-party use including license, sublicense, sell, resell, lease, transfer, assign, distribute, disclose, or otherwise commercially exploit or make it, or any portion thereof, available to any third party in any manner; (ii) modify, tamper with, repair or make derivative works based upon the ABB Content; (iii) copy, reproduce, publish, reverse engineer, attempt to derive the source code of, modify, disassemble, decompile or create derivative works of the ABB Content (except to the extent that applicable Laws prohibits reverse engineering restrictions, and then only as permitted by such Laws); (iv) copy any ideas, features, functions or graphics of the ABB Content; (v) access or use the ABB Content in a way to avoid incurring fees or exceeding usage limits or quotas or to circumvent or render inoperative any usage restriction features contained in ABB Content; and/or (vi) remove, obscure, alter, or move ABB’s and its licensors’ proprietary notices. Use of the ABB Content other than specifically permitted in this Agreement, is expressly prohibited.

9. Right to Injunctive Relief

You acknowledge that Your breach of its obligations with respect to ABB’s proprietary rights will cause irreparable injury to ABB and will entitle ABB to seek injunctive or other equitable relief.

10. Warranties

ABB warrants that, the Product, when used in its intended operating environment, will perform substantially in compliance with its Specifications for a period of three (3) months or such other period as specified in the applicable Order following the delivery of the Product to You. You must notify ABB in writing of any warranty claim describing the defect in reasonable detail before the end of the warranty period. With regard to Third Party Software, any warranty is excluded, unless otherwise provided in the applicable Order.

If you allege that a Service is not performed consistent with this services warranty, you must notify us without undue delay, after becoming aware of the defect or having the possibility to gain knowledge of the defect but in no event later than 14 days thereafter, in writing about the defect in reasonable detail and, if we are able, by application of commercially reasonable effort, to reproduce and verify the defect, we will use commercially reasonable efforts to rectify the defect or, if the defect is of the nature of unavailability of Services, restore the Services which were not performed as warranted.

11. Limited Warranty Obligations of ABB

ABB shall provide corrections of, or avoidance procedures for the identified defect remotely by electronic means.

Exclusion. The limited warranty does not apply: (a) to any customizations or modifications; (b) if the Product is not used on the equipment, or in accordance with the documentation, this Agreement or the applicable Order; (c) if the Product has been installed (except where installation is Your responsibility and if and to the extent You fully complied with ABB's installation instructions), implemented, customized, modified, enhanced or altered by You or any third party; (d) to any error or defect caused by You, any third party, or any software, or force majeure; (e) to any error or defect arising as a result of drawings, designs or specifications provided by You; or (f) to any updates (g) if You are not using the most recent version of the Product and the defect has been remedied in the newer version. TO THE EXTENT PERMITTED BY LAW, THIS IS YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE LIMITED WARRANTIES.

DISCLAIMER. EXCEPT AS OTHERWISE PROVIDED HEREIN, ABB MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCT, OR ANY MAINTENANCE PROVIDED BY ABB INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AND ABB EXPRESSLY DISCLAIMS ANY SUCH WARRANTIES. IN ADDITION, ABB DOES NOT WARRANT THAT: (a) THE PRODUCT WILL OPERATE UNINTERRUPTED OR ERROR-FREE; (b) ALL ERRORS CAN BE CORRECTED; (c) THE PRODUCT IS INVULNERABLE OR THIRD-PARTY DISRUPTIONS OR UNAUTHORIZED THIRD PARTY ACCES CAN BE PREVENTED; OR (d) THE APPLICATIONS CONTAINED IN THE PRODUCT ARE DESIGNED TO MEET ALL OF YOUR BUSINESS REQUIREMENTS. YOU ACKNOWLEDGE THAT YOU HAVE ASSESSED FOR YOURSELF THE SUITABILITY AND SECURITY ASPECTS OF THE PRODUCT FOR ITS REQUIREMENTS. IN ADDITION TO OTHER LIMITATIONS OF LIABILITY, ABB IS NOT LIABLE FOR ANY DOWNTIME OR SERVICE INTERRUPTION, FOR ANY LOST, STOLEN OR CORRUPTED DATA, OR FOR ANY OTHER DAMAGES ARISING OUT OF OR RELATING TO ANY UNAUTHORIZED THIRD-PARTY ACCESS.

12. Indemnification

ABB shall indemnify and defend You against any claim brought against You by third parties alleging the use of any of the Product: (a) infringes a patent, copyright or trademark registered as of the date ABB provides You with the Product; or (b) misappropriates any third party trade secret (collectively, an "Infringement Claim"); provided that (i) You give ABB prompt notification in writing of any such Infringement Claim and reasonable assistance, at ABB's expense, in the defense of such Infringement Claim; and (ii) ABB has the sole authority to defend or settle such Infringement Claim as long as such settlement shall not include a financial obligation on You.

Indemnification Limitations. ABB shall have no obligation for any Infringement Claim arising out of or relating to: (a) a modification created by or at the direction of You or a third party; (b) use of the Product other than in accordance with the terms of this Agreement, or the specifications provided as part of the Product; (c) use of any of the Product in combination with any other hardware, software or other materials, where absent such combination, such that the affected Product would not be the subject of the Infringement Claim; (d) use of Product or version thereof for which the agreed term has expired; (e) use of the Product without Your implementation of all applicable updates; or (f) any Third-Party Software.

Effect of Infringement Claim. If an Infringement Claim is or, in ABB's reasonable belief, is likely to be asserted, (a) ABB may require You to discontinue use of the applicable Product immediately; and (b) ABB will, at its sole option, either (i) procure for You the right to use and exercise its rights with respect to the Product; (ii) replace the affected Product with other non-infringing Product or modify the affected Product to make it not infringing while retaining substantially similar functionality; or (c) if the remedies set forth in clauses (b)(i) and (b)(ii) are not commercially feasible, as determined by ABB in its sole discretion, terminate the affected Order, in whole or in part, and pay You a pro rata refund of the fees paid for the Product, depreciated on a five-year straight line basis.

THE PROVISIONS OF THIS SECTION STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF ABB TO CUSTOMER, AND ARE CUSTOMER'S SOLE REMEDY WITH RESPECT TO, ANY CLAIM OR ALLEGATION OF INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

13. Responsibility and liability (limits)

ABB's and its suppliers' entire liability and Your exclusive remedy shall be, at ABB's sole discretion to, either (i) return of the amount paid, if any or (ii) repair or replacement of the Product that does not meet ABB's limited warranty and which is returned to ABB with a copy of Your receipt. This limited warranty is void if failure of the Product has resulted from accident, abuse or misapplication. Any replacement Product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

NOTWITHSTANDING ANYTHING TO THE CONTRARY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ABB OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSSES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OR DAMAGE OF DATA, LOSS OF BUSINESS INFORMATION OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF ABB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, ABB'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS EULA SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE PRODUCT.

14. Export Controls

Neither party shall export, directly or indirectly any Product in breach of any applicable export control laws, including United States export laws, to any country for which the government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

Each party undertakes: contractually to oblige any third party to whom it discloses or transfers any such data or Products to make an undertaking to it in similar terms to the one set out above; and if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any export control laws.

15. Delivery, installation and Configuration of Software

You agree to only install the OptiFact software through the mechanisms provided by ABB, meaning the OptiFact installer scripts or software and to configure it fully and appropriately as described in Specifications and user manuals provided by ABB.

Any and all support for OptiFact services and processes will only be provided by electronic means, with this access provisioned and maintained by You with secured access SSH (Secure Shell) tunneling through SSH certificates and whichever technology You elect.

Failure to provide such tools and access will result in ABB being unable support on or resolve any requests for assistance, until such tools are in place.

16. Update, Upgrade, Fix or Patch

You agree to use the latest version of the OptiFact software throughout your use of the Product. Updates, Upgrades, Fixes or Patches will only be delivered by electronic means and require You to ensure reasonable access to connectivity and proper execution of update cycles as communicated by ABB.

ABB does not investigate or fix and issues or defects that may appear on outdated version of the Product

Failure to provide connectivity or access will result in ABB being unable support on or resolve any requests for assistance, until such tools are in place.

In the situation where You receive an update, fix or patch to a Product containing any additional or different terms that are applicable to such update, fix or patch as specified in the Order. You will accept these additional terms on top of the current Agreement. The additional or different terms may replace or modify the terms of this Agreement.

17. Term, extension and termination

This Agreement is effective as long as the product is in use, until the end of the license term or until terminated. ABB may terminate the Agreement if You fail to comply with the terms of this Agreement.

The absence of usage does not impact the Warranty period or justify any termination of the current agreement.

If the Agreement is terminated for any reason by either party, You agree to promptly discontinue use of and destroy all copies of the Product. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled and apply to both parties' respective successors and assignees.

18. Territory, applicable law and law forum (dispute resolution mechanism)

This Agreement and performance hereunder shall be governed by, and construed in accordance with the substantive law of Switzerland excluding both its conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). Any dispute, controversy or claim arising out of or in connection with this EULA, or the breach, termination or invalidity thereof, shall be finally settled by the courts of Zurich, Switzerland.

If any provision of this Agreement is invalid, illegal or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the remaining provisions shall not be affected in any way.

19. Code of conduct and anti-bribery law

ABB maintains a set of codes of conduct and guidelines related to ABB's, its employees' and its contractors/subcontractors' business conduct, including anti-bribery, anti-corruption and conflict of interest. ABB also requires its suppliers to comply with such codes of conduct or have equivalent codes of conduct for their companies, employees and contractors/subcontractors, accessible at "<http://new.abb.com/about/integrity/standards/abb-code-of-conduct>"

20. Choice of Language

The original of the Agreement is in English. If the Contract is translated into any other language the English version shall control.

21. General Provisions

Force majeure. ABB shall not be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control, including: (i) acts of God, flood, drought, earthquake or other natural disaster; (ii) epidemic or pandemic; (iii) terrorist attack, civil war, cyber-attacks, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (iv) nuclear, chemical or biological contamination or sonic boom; (v) any Laws or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary license or consent; collapse of buildings, fire or explosion; and (vi) any labour or trade dispute, strikes, industrial action or lockouts;

Assignment and other dealings. ABB may at any time assign, transfer, mortgage, charge or deal in any other manner with all or any of its rights under the Agreement. You shall not, without the prior written consent of ABB, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement.

Business Contact Information. Subject to them complying with the ABB Data Privacy Policy and privacy laws applicable to ABB, ABB and its Affiliates, and their subcontractors (including those who process data on their behalf), may, wherever they do business, store and otherwise process business contact information (for example name, business telephone, address, email and user IDs) of You, Your personnel and Users for the purpose of business dealings with them.

Data Protection. The parties agree that You shall be the data controller, who shall ensure compliance with the applicable data protection laws, in particular the lawfulness of the processing of personal data. ABB shall be processing personal data on Your behalf in accordance with the ABB Data Privacy Policy and shall ensure compliance only with regard to those obligations under applicable data protection laws that are specifically directed to processors and shall act according to Your lawful instructions. ABB's personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities and have executed written confidentiality agreements. ABB may, and You agree that You will not withhold or delay Your consent if needed, to any changes to this data protection clause and/or to any additional data processing or data protection agreements which in the reasonable opinion of ABB are required to be made in order to comply with applicable data protection laws and regulations and/or with guidelines from any competent supervisory authority, and their application to the services provided by ABB from time to time.

All machine data processed within the intended use of the OptiFact software remains Your sole ownership and shall not be processed by ABB.

Severance. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Section shall not affect the validity and enforceability of the rest of this Agreement.

Commercial item. The Product and any accompanying documentation has been developed at private expense and are deemed to be a "commercial item," as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212. Use, duplication, and disclosure by civilian agencies of the U.S. Government shall be in accordance with FAR 52.227-19(c) or other agency data rights provisions, as may be applicable. Use, duplication, and disclosure by DOD agencies are subject solely to the terms of this Agreement as stated in DFAR 227.7202. All U.S. Government users license the Product with only those rights set forth herein, including, without limitation, the following: the Product may be transferred to the U.S. government only with the prior written consent of an officer of ABB and solely as restricted computer software as provided in FAR 52.227-19 or subsequent citation (or DFAR 227-7202 or subsequent citation if the transfer is to a defence-related agency).

Notices. All notices or other communications must be in writing and will be deemed to have been duly given (a) when delivered by hand (with written confirmation of receipt); or (b) two (2) calendar days after being deposited for delivery with a nationally recognized overnight delivery service and addressed to the appropriate address set forth on the first page of the Order (or to such other address as a party may designate by written notice to the other party). All notices to ABB shall be addressed to the attention of ABB's Chief Financial Officer with a copy delivered to ABB's General Counsel.

Third party beneficiaries. No one other than a party to the Agreement shall be a beneficiary of the Agreement or shall have any right to enforce any of its terms, unless specified in the Agreement.