



ABB Ability™ Operations Data Management zenon

End User License Agreement

English

END-USER LICENSE AGREEMENT

IMPORTANT - READ CAREFULLY: This End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and ABB Oy, whose registered office is located at Hiomotie 13, 00380, Helsinki, Finland (hereinafter referred to as "ABB"), for the software "ABB Ability™ Operations Data Management zenon" (hereinafter referred to as "ABB zenon"), which includes computer software, controller software, associated media, user manual, printed materials and electronic documentation as well as all modifications, updates, upgrades, new versions or releases and derivative works to the foregoing (hereinafter referred to as "Product").

YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA, including any amendment or addendum, which may accompany the PRODUCT, BY INSTALLING, COPYING OR OTHERWISE USING THE PRODUCT. IF YOU DO NOT AGREE, DO NOT INSTALL OR USE THE PRODUCT.

1. GRANT OF LICENSE

ABB grants you the following non-exclusive and restricted rights, provided that you comply with all the terms and conditions of this EULA.

1.1 Installation and use

You may install and use the Product freely for testing purposes under a limited demo license; any use in production is not permitted. Except to the extent prohibited by applicable law and notwithstanding paragraph 6 below, a Product used under a demo license is provided "as is", in its then current version, without any warranty of any kind and without any support commitments. All and any liability by ABB is excluded to the maximum extent possible under applicable law.

Under a full license, you are permitted to display the functional options that are specified in the license certificate, for their intended use as defined in the product documentation, and within the configuration and capacity limits that are specified in the license certificate.

You will not use, access or display functions that are not specified in the license certificate.

You will not exceed the configuration and capacity limits that are specified in the license certificate.

You will not share a license or use a license for the Product concurrently on different devices.

1.2 Storage

You may store a copy of the Product on a storage device, such as a network server, used only to install the Product on your other computers and controllers over an internal network; however, you must acquire and dedicate a license for each separate computer or controller on which the Product is installed from the storage device and executed.

1.3 Limitations in Use

You will 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 EULA 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.

1.4 Upgrades and additional software

This EULA applies to modifications, updates, upgrades, new versions or releases, derivative works of or supplements to the original Product provided by ABB, unless other terms are provided along with the modification, update, upgrade, new version or release, derivative works or supplement. After upgrading, you may no longer use the Product that formed the basis for your upgrade eligibility.

1.5 License fee

The license fee for using the Product is included in the price of the Product and shall be compensated with the payment of the contractual remuneration.

1.6 Third party software and open source software

The Product may include software, which is owned by a third party, including but not limited to open source software ("Third Party Software"). For Third Party Software the conditions of use agreed between ABB and its licensor shall apply with priority. The product documentation contains a list of Third Party Software components and of the respective license terms. You are not allowed to remove an existing copyright notice or license information with respect to the Third Party Software. Links to the license texts of the used open source software are attached to this document.

2. PROPRIETARY RIGHTS

The Product is protected by copyright and other intellectual property rights, including but not limited to patents. ABB or its licensors own all proprietary rights, title, copyright, patents, trademarks, trade secrets and other intellectual property rights in the Product and in all associated documentation and other material related to the Product in each case now existing or to be developed by ABB or you. The Product is licensed, not sold and all title, copyright, and other intellectual property rights in and to the Product remain exclusively with ABB or its licensors. You have no rights in and to the Product, other than those expressly granted to you pursuant to this EULA.

3. NON-DISCLOSURE

You will not disclose to any third party information of commercial or technical nature provided by ABB as part of or in association with the Product. You agree to not disclose benchmark test results related to the Product to any third party. You are to take all necessary action with your employees, agents or consultants who are permitted access to the Product to ensure compliance with your obligations hereunder and you are fully responsible and liable for all acts and omissions of such employees, agents and consultants. Disclosure shall be limited to those individuals who need access to the Product to enable you to exercise this EULA.

4. RESTRICTIONS

You will not (i) use the Product 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 other than specifically permitted in accordance with paragraph 5 below; (ii) modify, tamper with, repair or make derivative works based upon the Product; (iii) copy, reproduce, publish, reverse engineer, attempt to derive the source code of, modify, emulate, disassemble, decompile or create derivative works of the Product (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 Product; (v) access or use the Product 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 Product; and/or (vi) remove, obscure, alter, or move ABB's and its licensors' proprietary notices. Nothing in this license agreement permits you to derive the source or assembly code of files provided to you in executable or object format.

5. TRANSFER OF RIGHTS

You may not transfer the rights granted through this EULA to another end user or other third party without prior written approval from ABB. The transfer must include the license certificate and all component parts, media, printed materials, and this EULA. The transfer may not be an indirect transfer, such as a consignment. Prior to the transfer, the end user receiving the transferred rights must agree to all the terms of this EULA. You may not rent, lease, lend, or provide commercial hosting services with the Product.

6. WARRANTY

Warranty. ABB warrants that the Product, when used in its specified operating environment, will

perform substantially in accordance with the accompanying user manual for a period of 90 days from the date of receipt of the Product. Any replacement Product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. Neither these remedies nor any support services offered by ABB are available without proof of purchase from an authorized source. The warranty shall expire at all situations within 120 days from the date of the original receipt.

DISCLAIMER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ABB AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THAT THE PRODUCT WILL MEET YOUR SPECIFIC USE REQUIREMENTS, BE SECURE, UNINTERRUPTED AVAILABLE, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AS WELL AS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT, WITH REGARD TO THE PRODUCT.

Exclusive remedy. ABB's, its Affiliates' and its suppliers' and licensors' entire liability and your exclusive remedy for non-compliance with ABB's warranty shall be, at ABB's sole discretion to, either (i) return of the price 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.

Limitations. ABB does not warrant that the Product will operate in combinations which may be selected for use by you. This warranty does not apply if (i) an error or defect of the Product results from accident, abuse, misapplication, or virus infection; (ii) you are not using the most recent version of the Product and the error or defect has been remedied in the newer version (iii) any error or defect is caused by you or any third party.

7. INTELLECTUAL PROPERTY INFRINGEMENT

If any third party makes a claim against you that the Product, if used in accordance with its documentation, infringes a third party's copyright, patent or trademark, ABB will defend you against such claim and pay the amounts finally awarded by a court against you or included in a settlement approved by ABB, provided that (i) you promptly notify ABB in writing of the claim; (ii) ABB shall have the sole control of the defense and all related settlement negotiations; and (iii) you provide ABB with the assistance, information and authority necessary for ABB to perform its obligations under

this section. ABB shall have no liability or obligation towards you in respect of an actual or alleged intellectual property right infringement if this results from or is related to (i) any breach by you of your obligations under this EULA or of any other agreement between you and ABB; (ii) a modification or configuration created by or at the direction of you or a third party; (iii) use of the Product in combination with any other hardware, software or other materials, where absent such combination, the Product would not be the subject of a claim; (iv) use of a version of the Product for which ABB has provided updates or upgrades and you have not updated or upgraded the Product; or (v) any Third-Party Software.

If the Product is held to constitute an infringement of a third party's copyright, patent or trademark, or such is considered by ABB to constitute such infringement, ABB shall have the option, at its own expense, to: (i) modify the Product so that it no longer constitutes an infringement; (ii) obtain a license for you to continue using the Product notwithstanding such infringement; (iii) replace the Product with substitutes which do not constitute infringements, provided that such substitutes do not entail a material diminution in performance or function; or (iv) if (i) to (iii) are not commercially feasible, as determined by ABB in its sole discretion, terminate the applicable order, in whole or in part, and pay you a pro rata refund of the fees paid by you for the infringing Product. The foregoing paragraphs state the entire liability of ABB and your exclusive remedies for any intellectual property infringement.

8. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ABB, ITS LICENSORS OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, LOSS OF ANTICIPATED SAVINGS, DELAYS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OR CORRUPTION OF DATA 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 THIS EULA (WHETHER IN CONTRACT, TORT, BREACH OF STATUTORY DUTY OR OTHERWISE) SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SPECIFIC PRODUCT GIVING RISE TO THE CLAIM. HOWEVER, IF YOU HAVE ENTERED INTO AN

ABB SUPPORT SERVICES AGREEMENT, ABB'S ENTIRE LIABILITY REGARDING SUPPORT SERVICES SHALL BE GOVERNED BY THE TERMS OF THAT AGREEMENT.

9. EXPORT RESTRICTIONS

You acknowledge that the Product may be subject to domestic and/or foreign statutory provisions and regulations regarding export control and, without export or re-export authorizations from the competent authorities, may not be sold, leased or otherwise transferred or used for a purpose other than that agreed upon. You agree to comply with such provisions and regulations. You acknowledge that such provisions and regulations may change and are applicable to the contract according to the wording valid at the time.

10. REMOTE CONNECTION

10.1 Remote connection

The Product may include functionality that allows to establish a remote connection to the Product and certain services related to the Product may require the establishment of a remote connection. If a remote connection to the Product is either permitted by you or required for you being able to obtain certain services as specified in the respective service description, you will (i) establish and maintain a remote connection with appropriate connectivity; (ii) permit ABB, its employees, agents, consultants and/or subcontractors, to remotely access certain systems (a) as and to the extent agreed between ABB and you, or (b) as specified in the Product documentation or respective service description, all to the extent necessary for ABB to provide the services related to the Product; (iii) maintain adequate security protection on the remote connection as well as your systems, devices and hardware that directly or indirectly connect to the Product; and (iv) install and maintain any hardware, software, or other equipment necessary to establish and maintain the remote connection. You are and remain responsible for any data, the selection and implementation of any controls regarding, access, security, encryption, use and transmission of data as well as any back-up and the security of your system, hardware and software. Except as explicitly agreed otherwise by ABB in writing, you will promptly implement any software updates or upgrades provided by the respective vendors and/or by us, as applicable.

10.2 Suspension of remote connection

ABB may suspend the remote connection (and the related services) if ABB determine that such connection or your use of the related services (i)

pose a security risk to you, ABB and/or any third party; (ii) may adversely impact the performance of the Product; (iii) is in violation of any applicable laws or poses a risk that ABB is or will be in violation of applicable laws; (iv) is in violation of the EULA; or (v) may subject ABB or any third party to liability. ABB will suspend the remote connection only to the extent reasonably necessary. Unless ABB believes an immediate suspension is required, ABB will use commercially reasonable efforts to provide reasonable notice before suspending access.

11. CYBER SECURITY

This product is designed to be connected and to communicate information and data via a network interface. It is Customer's sole responsibility to provide and continuously ensure a secure connection between the product and Customer network or any other network (as the case may be). Customer shall establish and maintain any appropriate measures (such as but not limited to the installation of firewalls, application of authentication measures, encryption of data, installation of anti-virus programs, etc.) to protect the product, the network, its system and the interface against any kind of security breaches, unauthorized access, interference, intrusion, leakage and/or theft of data or information.

ABB and its affiliates are not liable for damages and/or losses related to such security breaches, any unauthorized access, interference, intrusion, leakage and/ or theft of data or information.

12. TERMINATION

Without prejudice to any other rights, ABB may terminate this EULA at any time in full or in part if you do not abide by the terms and conditions of this EULA. Demo licenses and fixed term licenses will expire automatically at the end of the respective license term. In any case of termination or expiration you must immediately stop using the license. Any terms of this EULA that by their nature extend beyond termination of this EULA remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

13. GOVERNING LAW AND JURISDICTION

This EULA shall be governed by and construed in accordance with the laws of Switzerland under exclusion of its conflict of laws rules and the United Nations Convention on International Sale of Goods. Any dispute, controversy or claim arising out of, or in relation to, this EULA, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers Arbitration Institution in force on the

date on which the notice of arbitration is submitted in accordance with these Rules. The number of arbitrators shall be three. The seat of the arbitration shall be Zurich, Switzerland. The arbitral proceedings shall be conducted in English language.

14. DATA PRIVACY

Each party shall comply with all applicable laws related to the protection of Personal Data that apply to their respective performance and processing under the EULA. We and our Affiliates may, wherever we or they do business, store and otherwise process your and your representatives contact information (for example name, business telephone, address, email and user IDs) for the purpose of business dealings with you. You will not send or provide ABB access to any personal data other than contact information as specified above in this section 13. If ABB should act as a data processor of your personal data in connection with Product related services, additional terms as set out in the respective services agreement may apply.

15. FORCE MAJEURE

Neither ABB nor you shall be responsible or liable for failure to perform any of its obligations under the EULA if such failure results from events, circumstances or causes beyond its reasonable control.

16. HEADINGS

The headings of the various paragraphs and subparagraphs herein are for convenience only and shall not control or affect the meaning or construction of any provisions of this Agreement.

17. SEVERABILITY

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.

18. ENTIRE AGREEMENT

This agreement, including any addendum or amendment to this agreement that is included with the Product, is the entire agreement between you and ABB relating to the Product and related support services (if any) and they supersede all prior or contemporaneous oral or written communications, proposals, and representations, with respect to the Product or any other subject matter covered by this agreement. To the extent the terms of any ABB policies or programs for support services conflict with the terms of this agreement, the terms of this agreement shall control.

Open Source Software Licenses

Gnu/ Mozilla Public Licenses -

<http://search.abb.com/library/Download.aspx?DocumentID=9AKK107045A6610&LanguageCode=en&DocumentPartId=&Action=Launch>

Open Source Licenses -

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In case of questions, please contact zenon.support@abb.com

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