



END USER LICENSE AGREEMENT (EULA)

End User License Agreement (EULA)

By and between

BLACKBIRD ApS
CVR number (Danish Company Register number 37 19 24 22)
Pakhus 48
Sundkaj 153.2
2150 Nordhavn
Copenhagen, 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.
- **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.

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- **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.

3.2 This EULA Entire agreement 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 us unless and until confirmed by BB in writing.

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. Further to the License, BB grants to the User the rights to the Service and Support, and Upgrade as described in Clauses 7 and 8 below.

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5.2 The prices for The License Fee shall be those set forth in our order confirmation. All prices are exclusive of taxes, impositions, and other charges, including, but not limited to, sales, use, excise, value added, and similar taxes or charges imposed by any government authority.

5.3 For each license granted to the User, BB will charge an annual (12 months) prepaid 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 hereafter on a yearly 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 adjusted according to DK consumer index pricing, however with a minimum of two (2) %.

5.7 BB reserves the right to increase the License Fee in relation to significant feature or product updates. Adjustments to significant feature or product updates will be communicated to the User with three months' notice.

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. This shall be in addition to, and not in limitation of, any other rights or remedies to which BB are or may be entitled at law or in equity.

5.9 Title to hardware delivered shall remain vested in BB and shall not pass to Use until the hardware have 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 their full replacement value until title to the hardware has passed to the User.

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.

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, BB is entitled to invoice the User for all non-returned hardware in accordance with Clause 5.

7. Services and Support

7.1 Service Level Agreement:

- BB undertakes to respond to any 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.

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- 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.

9. Customization

9.1 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. IP Rights and Secure Code

10.1 The Software, including without limitation, its object code and source code and any and all Upgrades, whether provided to the User or not, is the sole property of BB. The User may not exercise any rights, title and interest and the Software, including without limitation all 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,

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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.

10.2 The User is not allowed to reverse engineer the Software.

11. Termination

11.1 The User may terminate this EULA by cancelling the License subscription with a notice of “current” month plus three (3) months prior to end of subscription.

11.2 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.

11.3 BB may terminate this EULA by cancelling the License subscription with a notice of “current” month plus six (6) months.

12. Premature Termination

12.1 Any Party may give notice in writing to the others terminating this EULA with immediate effect, should any other Party commit any material breach of any of the terms of this EULA (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.

12.2 Notice of termination with immediate effect may also be served in case any Party has a bankruptcy order made against it; 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.

13. Limitation of Liability, Force Majeure

13.1.1 BB will be responsible according to general principles of tort under Danish laws with the following limitations:

- BB will not be responsible for any indirect claims and/or losses or tort, including, but not limited to operating loss or loss of profit., business interruption costs, removal and/or reinstallation costs, reprourement costs, loss of data, injury to reputation or loss of customers.
- BB will not be responsible for Use of Factbird® Out of Scope.
- Regardless of the type of loss or the liability basis BB will not be responsible for an amount that exceeds DKK 100.000.

13.2 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.

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13.3 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.

13.4 In case of the occurrence of a Force Majeure Event none of the Party can terminate this EULA nor claim any damages from the other Parties. However, if such Force Majeure Event lasts more than ninety (90) days, any Party hereto shall be entitled to terminate this EULA by notice to the other Parties with immediate effect.

14. Non-assignment by the User

14.1 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.

15. Confidentiality

15.1 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.

16. Change of terms and conditions to this EULA

16.1 BB reserves the right to make updates and changes to the terms and conditions of this EULA.

16.2 BB will give the User thirty (30) calendar days' notice of any updates and changes to this EULA by e-mail.

17. Governing Law and Venue

17.1 This Agreement shall be governed by and construed in accordance with Danish Law.

17.2 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.

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